



FLOOD CONTROL ADVISORY BOARD

Orientation & Procedures Manual



FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

2801 West Durango Street
Phoenix, Arizona 85009
(602) 506-4708

Flood Control Advisory Board

Orientation and Procedures Manual

Table of Contents

Flood Control Advisory Board (FCAB)	YELLOW Tab 1
Members.....	YELLOW Tab 2
Meeting Schedule.....	YELLOW Tab 3
Annual Topics.....	YELLOW Tab 4
Posting Notice Disclosure.....	YELLOW Tab 5
Bylaws.....	YELLOW Tab 6
Enabling Statutes.....	YELLOW Tab 7
Org Charts.....	YELLOW Tab 8
Floodplain Review Board (FRB)	GREEN Tab 1
Appeal Application.....	GREEN Tab 2
Regulations.....	GREEN Tab 3
Procedures.....	GREEN Tab 4
Posting Notice Disclosure.....	GREEN Tab 5
FEMA NIP & Variances.....	GREEN Tab 6
Membership.....	GREEN Tab 7
Board of Hearing Review (BOHR) ..	RED Tab 1
Procedures.....	RED Tab 2
Membership.....	RED Tab 3
Posting Notice Disclosure.....	RED Tab 4

1-FCAB

Flood Control Advisory Board (FCAB)

MISSION:

The Flood Control Advisory Board shall act in an advisory role to the Board of Directors of the Flood Control District on matters pertaining to flood control, drainage, water conservation and related matters.

LIAISON:

Michael A. Fulton, Director

CURRENT MEMBERS:

District 1: Richard Schaner

District 2: Gregg Monger

District 3: Hemant Patel

District 4: Robert Justice

District 5: Vacant

City of Phoenix: Ray Dovalina

Salt River Project: Kyle Tilghman

GENERAL DESCRIPTION:

The Flood Control Advisory Board (FCAB) acts in an advisory role to the Board of Directors on flood control, floodplain management, drainage and related matters. The FCAB reviews planning, operations and maintenance of flood control facilities, and recommends an annual budget, which includes a five-year Capital Improvement Program (CIP), to the Board of Directors.

The FCAB reviews program priorities and new policies, and provides their recommendations to the Board of Directors. In reaching its decisions, the FCAB closely coordinates with District staff and takes into consideration input from both municipalities and citizens. The FCAB members also serve the District as members of the Floodplain Review Board, for hearing appeals and variances to the Floodplain Regulations. The five members of the Floodplain Review Board who are appointed by the Board of Directors also serve as the Board of Hearing Review for hearing appeals to Chief Engineer Orders related to floodplain violations and to violations for damage to District facilities.

The Flood Control Advisory Board consists of seven members. Five of the seven members are appointed by the Board of Directors for five-year terms. At least three members shall be residents of cities within the District and at least one of the three shall be a resident of the largest city in the District (Phoenix). In

addition to the five members appointed by the Board of Supervisors, the Salt River Project and the City of Phoenix appoint representatives who are ex-officio members of the FCAB with all rights and privileges granted to other members.

Regular FCAB meetings are held on the fourth Wednesday of each month, except in December when the meeting is held on the first Wednesday of the month. No meetings are held in July or November. The meetings begin at 2:00 p.m. in the Flood Control District administrative building at 2801 W. Durango Street in Phoenix. Contact the Flood Control District at (602) 506-1501 to confirm the meeting schedule.

FCAB meeting notices are posted within the first-floor public lobby of the Flood Control District administrative building at 2801 W. Durango Street in Phoenix. Such notices will indicate the date, time and place of the meeting(s), and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting(s).

MEMBER QUALIFICATIONS:

A.R.S. § 48-3611:

- "A. The Board of Directors may appoint a citizens' flood control advisory board consisting of seven members. Five members shall be resident taxpayers and qualified electors of the district, at least three of whom shall be residents of the cities in the district. At least one of the board members who are residents of cities shall be a resident of the largest city in the district. The city engineer of the largest city in the district and the chief engineer or manager of a major irrigation or agricultural improvement district, or their representatives, shall be ex officio members of the advisory board with all rights and privileges granted to other board members.

- B. In appointing members of the advisory board the Board of Directors shall designate which appointive member shall serve for one year, which for two years, which for three years, which for four years and which for five years. Thereafter the term of each appointive member is five years except for a member appointed to an unexpired term."

MEETINGS:

Regular meetings will be scheduled the fourth Wednesday of each month except for December when it will be scheduled for the first Wednesday of the month, and no meetings will be scheduled in July or November unless requested by the Chairman of the FCAB.

POWERS AND DUTIES:

A.R.S. § 48-3611:

- "C. The citizens' flood control advisory board may request information from the chief engineer and general manager and his staff, engineering personnel from cities in the district and any other person with a knowledge of flood control practices. They may recommend the employment of

consultants for the purpose of obtaining technical information and recommendations regarding flood control and floodplain management practices.

- D. The advisory board shall study the flood control, floodplain regulation, drainage and water conservation needs of the district, shall meet with and advise the board as requested by the board and may submit to the board reports and recommendations relating to such studies, but the recommendations are advisory only."

FCAB Bylaws, Article II:

- "Section 1. The FCAB shall act in an advisory role to the Board of Directors of the District on matters pertaining to flood control, drainage, water conservation, and related matters (ARS 48-3611D).
- Section 2. The FCAB shall, within its power, recommend policies for the operation of the District.
- Section 3. The FCAB shall review and recommend criteria for the acceptance, maintenance, and operation of flood control facilities by the District.
- Section 4. The FCAB shall annually review and recommend a five year capital improvement program for submission to the Board of Directors at least three months prior to the final date for submission of the annual budget.
- Section 5. The FCAB shall annually recommend a budget for the next fiscal year for adoption by the Board of Directors.
- Section 6. The FCAB shall have the right to request information from the Chief Engineer & General Manager and his staff, engineering personnel from cities within the District, and any other person with knowledge of flood control practices. The FCAB may recommend the employment of consulting engineers for the purpose of obtaining technical information and recommendations regarding flood control practices (ARS 48-3611C).
- Section 7. The FCAB shall assist in the development of increased public understanding and support for the comprehensive flood control program.
- Section 8. The FCAB shall recommend legislative changes as appropriate.
- Section 9. The FCAB shall sit in review and make decisions concerning interpretation of and allow variances from the terms of the Floodplain Regulation, and hear appeals by any person aggrieved through the administration of the Floodplain Regulation in accordance with Section 601 of the Floodplain Regulations for Maricopa County (ARS 48-3612)."

FORMATION AUTHORITY:

A.R.S. § 48-3611:

"Citizens' flood control advisory board; qualification; functions

- A. The board of directors may appoint a citizens' flood control advisory board consisting of seven members. Five members shall be resident taxpayers and qualified electors of the district, at least three of whom shall be residents of the cities in the district. At least one of the board members who are residents of cities shall be a resident of the largest city in the district. The city engineer of the largest city in the district and the chief engineer or manager of a major irrigation or agricultural improvement district, or their representatives, shall be ex officio members of the advisory board with all rights and privileges granted to other board members.

- B. In appointing members of the advisory board the board of directors shall designate which appointive member shall serve for one year, which for two years, which for three years, which for four years and which for five years. Thereafter the term of each appointive member is five years except for a member appointed to an unexpired term.”

FCAB MEMBERS, TERM EXPIRATIONS AND SUB-COMMITTEES

Revised: October 23, 2019

FCAB BOARD MEMBERS	TERM EXPIRATION
• Robert “DeWayne” Justice – Chair	11/15/2021
• Richard “Dick” Schaner – Vice Chair	08/17/2021
• Gregg Monger - Secretary	11/15/2023
• Hemant Patel	11/15/2024
• Vacant	11/15/2016
• Kyle Tilghman (SRP)	N/A (Ex Officio)
• Ray Dovalina (City of Phoenix)	N/A (Ex Officio)



LEGISLATIVE COMMITTEE

Hemant Patel

Ray Dovalina

PROGRAM & BUDGET COMMITTEE

Hemant Patel

Ray Dovalina

Gregg Monger

POLICY COMMITTEE

DeWayne Justice

Gregg Monger

PUBLIC INFORMATION COMMITTEE

Dick Schaner

Kyle Tilghman

3-Meeting Schedule

FLOOD CONTROL ADVISORY BOARD (FCAB) **— 2020 Meeting Dates —**

FCAB Bylaws, Article V, Section 1, state that regular meetings will be held the fourth Wednesday of each month, except for December when it will be held on the first Wednesday of the month. Meetings will not be scheduled in July or November, unless called by the Chairman of the FCAB.

All regular FCAB meetings are held at 2:00 p.m. in the Adobe Conference Room of the Flood Control District located at 2801 West Durango Street in Phoenix.

Jan 22
Feb 26
Mar 25
Apr 22
May 27
June 24
Aug 26
Sep 23
Oct 28
Dec 02

Meeting dates and time are subject to change. Changes will be posted in accordance with the Open Meeting Law. A copy of the agenda will be available at the Flood Control District, 2801 W. Durango Street, Phoenix, Arizona, at least twenty-four (24) hours in advance of each meeting. Questions may be directed to Kristine Rabe of the Flood Control District at (602) 506-4708.

Flood Control Advisory Board Annual Recurring Topics

Some of these are action items for FCAB approval and recommendation, others are for information only.

December or January Meeting

- Capital Improvement Project Prioritization Procedures Results

January or February Meeting

- Proposed Operating Budget and Decision Package Review
- Proposed Capital Project Budget and Five-Year Capital Improvement Program
- Dam Safety Program and Decision Package Elements
- Planning Program and Decision Package Elements
- Floodplain Delineation Program and Decision Package Elements

September Meeting

- Fiscal Year End Financial Update

October Meeting

- Election of Officers
- Appointment of Standing Committees

Other presentations as needed:

- Legislative Updates
- Significant changes at the Federal or State or local level of laws or programs affecting the District
- Project Specific Presentations for Design or Construction
- Results of Planning Studies
- Construction Activities
- Financial Updates
- Strategic Planning
- Weather Forecast Updates
- Emergency Planning and Preparedness
- Policy Issues
- Intergovernmental Agreements, Design, Right of Way, Construction, and Others, with local, State or Federal agencies
- Reports after major storm events
- Audit Results, Internal and External
- Organizational Changes
- Amendments to Regulations or procedures
- Small Project Assistance Program

- Water Conservation
- Public Multi-Uses and Opportunities for Flood Control Structures
- Floodprone Properties Acquisition
- Mapping and Aerial Photo acquisition
- Changes and updates in use of technology related to our mission
- Environmental Regulations



Flood Control District of Maricopa County

www.fcd.maricopa.gov

**Flood Control District
of Maricopa County**
2801 West Durango Street
Phoenix, Arizona 85009
Phone: (602) 506-1501
Fax: (602) 506-4601

STATEMENT OF POSTING

DISCLOSURE STATEMENT WHERE ALL POSTING NOTICES
OF THE MEETINGS OF THE MARICOPA COUNTY
FLOOD CONTROL ADVISORY BOARD

Pursuant to A.R.S. §38-431.02, the Maricopa County Flood Control Advisory Board (FCAB) will post meeting notices within the first floor public entrance of the Flood Control District of Maricopa County, 2801 West Durango, Phoenix, Arizona, which is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m. except legal holidays along with the Flood Control District public website (calendar) at:

<http://www.maricopa.gov/3847/Flood-Control-District>

Such notices will indicate the date, time and location of the meeting(s) and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting(s).

Dated this 15th day of November 2019

A handwritten signature in blue ink that reads "Kristine Rabe".

Kristine Rabe, *Clerk of the FCAB*

Flood Control District of Maricopa County

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
FLOOD CONTROL ADVISORY BOARD**

BYLAWS

ARTICLE I

Name

- Section 1. The name of this organization shall be the Flood Control Advisory Board, Flood Control District of Maricopa County, hereinafter referred to as the FCAB.

ARTICLE II

Functions and Responsibilities

- Section 1. The FCAB shall act in an advisory role to the Board of Directors of the District on matters pertaining to flood control, drainage, water conservation, and related matters (ARS 48-3611D).
- Section 2. The FCAB shall, within its power, recommend policies for the operation of the District.
- Section 3. The FCAB shall review and recommend criteria for the acceptance, maintenance, and operation of flood control facilities by the District.
- Section 4. The FCAB shall annually review and recommend a five year capital improvement program for submission to the Board of Directors at least three months prior to the final date for submission of the annual budget.
- Section 5. The FCAB shall annually recommend a budget for the next fiscal year for adoption by the Board of Directors.
- Section 6. The FCAB shall have the right to request information from the Chief Engineer & General Manager and his staff, engineering personnel from cities within the District, and any other person with knowledge of flood control practices. The FCAB may recommend the employment of consulting engineers for the purpose of obtaining technical information and recommendations regarding flood control practices (ARS 48-3611C).
- Section 7. The FCAB shall assist in the development of increased public understanding and support for the comprehensive flood control program.
- Section 8. The FCAB shall recommend legislative changes as appropriate.
- Section 9. The FCAB shall sit in review and make decisions concerning interpretation of and allow variances from the terms of the Floodplain Regulation, and hear appeals by any person aggrieved through the administration of the Floodplain Regulation in

accordance with Section 601 of the Floodplain Regulations for Maricopa County (ARS 48-3612).

ARTICLE III

Membership

- Section 1. The FCAB shall consist of seven members. Five members shall be resident taxpayers and qualified electors of the District, at least three of whom shall be residents of the cities within the District. At least one of the members who are residents of the cities within the District shall be a resident of the City of Phoenix. The Phoenix City Engineer and the General Manager of the Salt River Project, or their representatives, shall be ex-officio members of the FCAB with all rights and privileges granted to other members (ARS 48-3611A).
- Section 2. The Board of Supervisors shall appoint five members to the FCAB for five-year terms (ARS 48-3611B). Members shall continue to serve beyond the expiration of their term until they are either reappointed or replaced.
- Section 3. The FCAB may recommend to the Board of Supervisors any number of honorary members of the FCAB.
- Section 4. The FCAB may recommend removal of any members with three unexcused absences in a calendar year.

ARTICLE IV

Officers and Duties

- Section 1. Officers
- A. The officers of the FCAB shall be the Chair, Vice Chair, and Secretary.
 - B. The officers shall be elected by the FCAB members to serve a one-year term from November through October.
 - C. Vacant offices may be filled by election at a regular or special meeting.
- Section 2. Duties
- A. The Chair shall:
 - 1. Preside at all meetings.
 - 2. Appoint the Chair of all committees.
 - 3. Call all meetings.
 - 4. Be an ex-officio member of all committees.

5. Review and approve the agenda for all meetings.
6. Represent the FCAB at various meetings and activities.

B. The Vice Chair shall:

1. Act in the absence of the Chair.
2. Perform other duties as assigned by the Chair.
3. Annually review the Bylaws and make recommendations for a change.
4. Be an ex-officio member of all committees.

C. The Secretary shall:

1. Approve all minutes taken and prepared by the Clerk of the Board.
2. Review the Orientation and Procedures Manual and make recommendations for update and change.

Section 3. Election of Officers

- A. At the October meeting, the FCAB shall elect a Chair, Vice Chair and Secretary.
- B. Persons receiving the majority of votes shall be elected.

ARTICLE V

Meeting

- Section 1. Regular meetings will be scheduled the fourth Wednesday of each month except for December when it will be scheduled for the first Wednesday of the month, and no meetings will be scheduled in July or November unless requested by the Chairman of the FCAB.
- Section 2. Meetings will begin at 2:00 p.m. at the Flood Control District unless otherwise agreed upon by the FCAB, and will be open to the public.
- Section 3. Special meetings shall be held after due notification of all members, at the call of the Chair, or upon the written or oral request of at least three members.
- Section 4. A schedule of meetings will be appropriately displayed in the Flood Control District office.
- Section 5. Meeting agendas and related facts and history of items to be reviewed will be delivered to all members at least seven days prior to regularly scheduled meetings. The standard notice of agenda or agenda header information will include a statement that matters on the open meeting agenda may be discussed in executive session for the purpose of obtaining legal advice thereon, at the discretion of the Chair.

Section 6. A quorum shall consist of a majority of the members.

ARTICLE VI

Committees

Section 1. The Standing Committee of the FCAB shall be:

- A. Legislative: Deal with all legislative matters relating to the FCAB, the District and the flood control program.
- B. Program and Budget: Deal with all matters relating to budget, fees, capital improvements and other matters of a fiscal nature.
- C. Policy: Deal with all matters relating to District policy, including recommendations to the Board of Directors.
- D. Public Information: Promote a better understanding of the District and the flood control program.

Section 2. In order to assist the FCAB in its functions and responsibilities (see Section 6, Article II above), two groups have been established to act in an advisory capacity to the FCAB. The primary purpose of the members of these groups is to attend the meetings of the FCAB, represent the desires and needs of the organization they represent, and take information to their organizations pertaining to plans and actions of the FCAB.

- A. Consulting Group: The Consulting Group members are ex-officio members representing each town or city in the District that chooses to designate a representative. Terms of these members do not expire. These members are usually city engineers, public works directors, or town or city managers.
- B. Advisory Group: The Advisory Group members are appointed by the FCAB for three-year terms. These members represent government agencies and other organizations with an interest in, or functions related to, flood control. Organizations represented can be added or deleted by the FCAB, with the recommendation of the Public Information Standing Committee.

ARTICLE VII

Rules

Section 1. The latest edition of Robert's Rules of Order shall prevail at all meetings.

ARTICLE VIII

Amendments

- Section 1. Amendments to the Bylaws may be made at any official meeting of the FCAB, providing a notification of such action and changes proposed has been made at least four weeks prior to the meeting.
- Section 2. Amendments must be adopted by a majority of those members present.
- Section 3. Amendments to the Bylaws shall be authenticated and dated by the Secretary.

Title 48 Arizona Revised Statutes

Chapter 21 Flood Control Districts

Copied from ARS Web Site 9/10/2018

Includes changes from 2018 Legislative Session

DO NOT ALTER OR DELETE ANY INFORMATION

STATUTES CAN BE FOUND AT

<http://www.azleg.gov/arsDetail/?title=48>

Article 1 County Flood Control Districts

48-3601. Definitions

In this article, unless the context otherwise requires:

1. "Area of jurisdiction" means the incorporated and unincorporated areas of the county, including public lands, excluding those incorporated areas of cities or towns which have elected to assume floodplain management powers and duties pursuant to section 48-3610.
2. "Board" means the board of directors of a flood control district organized under this article.
3. "Development" means any man-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
4. "District" means a flood control district organized pursuant to this article.
5. "Flood" or "floodwaters" means a temporary rise in water level including groundwater or overflow of water onto lands not normally covered by water.
6. "Floodplain" means any areas in a watercourse which have been or may be covered partially or wholly by floodwater from the one hundred-year flood.
7. "Floodplain regulations" means the codes, ordinances and other regulations adopted pursuant to this article relating to the use of land and construction within the floodway and floodplain areas.
8. "Floodway" means the area of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation more than one foot.

9. "One hundred-year flood" or "base flood" means a flood that has a one per cent chance of being equalled or exceeded in a one year period, based on the criteria established by the director of water resources.
10. "Person" means an individual or the individual's agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or this state or its agencies or political subdivisions.
11. "Regulatory flood elevation" means the elevation which is one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the director of water resources for all other watercourses.
12. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

48-3602. Organization of county flood control district

- A. Each county shall organize a county flood control district to include and govern its area of jurisdiction.
- B. The county board of supervisors shall be the board of directors of the district. The directors shall not receive compensation for their services as such but are entitled to reimbursement for their necessary expenses in attending district meetings and for necessary expenses incurred in traveling within and without this state if necessary to carry on the affairs of the district.
- C. County flood control districts are in addition to any flood protection district organized pursuant to chapter 18, article 10 of this title, and the mere existence of a county flood control district does not of itself affect the existence or operation of any flood protection district organized pursuant to chapter 18, article 10 of this title.

48-3603. Powers, duties and immunities of district and board; exemptions

- A. A county flood control district organized under this article is a political taxing subdivision of this state and has all the powers, privileges and immunities granted generally to municipal corporations by the constitution and laws of this state, including immunity of its property and bonds from taxation.
- B. The board of directors shall exercise all powers and duties in the acquisition and operation of the properties of the district and in carrying out its regulatory functions under this article as are ordinarily exercised by the governing body of a municipal corporation.
- C. A district organized under this article, acting through its board of directors, may:

1. Acquire by eminent domain, purchase, donation, dedication, exchange or other lawful means rights-of-way for and construct, operate and maintain flood control works and storm drainage facilities within or without the district for the benefit of the district.
2. Acquire by eminent domain, purchase, donation, dedication, exchange or other lawful means and dispose of by sale, exchange or other lawful means real and personal property within the boundaries of the district.
3. Contract and join with this state, the United States or any other flood control district or floodplain board, municipality, political subdivision, governmental agency, irrigation or agricultural improvement district, association, corporation or individual in acquiring, constructing, maintaining and operating flood control works, and regulating floodplains.
4. Enter into contracts of indemnity to indemnify this state, the United States or any other flood control district, municipality, political subdivision, governmental agency, irrigation or agricultural improvement district, association, corporation or individual against liability by virtue of injuries, losses or damages occurring through the use of their facilities, structures, streets, rights-of-way or properties in connection with the operation of a flood control district and the regulation of floodplains.
5. Acquire and maintain existing flood control and drainage facilities within the district for the benefit of the district if mutually agreeable to the owners of such facilities.
6. Acquire, convert and maintain surplus irrigation facilities as storm drainage facilities if mutually agreeable to owners of such facilities.
7. Construct, maintain and operate flood control and storm drainage facilities and regulate floodplains in the district by agreement with this state, counties, other municipal corporations, political subdivisions and other persons and reimburse the agencies or persons for the cost of the work.
8. On the dissolution of any other flood control district, assume the assets and obligations of the other district.
9. Enter into intergovernmental agreements with other public agencies pursuant to title 11, chapter 7, article 3 to carry out the objects and purposes of the district.
10. Apply for, obtain, expend and repay flood control loans pursuant to title 45, chapter 8, article 5.
11. Apply to the director of water resources for alternative flood control assistance for flood control projects pursuant to section 45-1471, except that the director shall not grant any such assistance for any project unless the director has approved the project in advance of planning.
12. Sue and be sued, enter into contracts and generally do all things that may be necessary to construct, acquire and maintain facilities, operate the

district and perform its regulatory functions and that are in the interests of the district.

13. Adopt rules and bylaws for its orderly operation as it sees fit.
14. Appoint a chief engineer and general manager, who may be the county engineer.
15. Appoint a treasurer, who may be the county treasurer, an attorney, who may be the county attorney, and other employees it considers desirable and necessary to carry out the purposes of the district. Any other work required by the district may be performed by regular employees of the county on assignment by the board of supervisors, except that regular county employees shall not undertake construction projects with an estimated cost of five thousand dollars or more.
16. Allow variances from the terms or regulations adopted pursuant to this article to the extent permitted by section 48-3609, subsection B, paragraph 7 and if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting the variance the general intent and purposes of this article and the regulations will be preserved.
17. Construct, operate and maintain artificial groundwater recharge facilities, and, if organized in a county having a population of more than five hundred thousand persons, underground storage and recovery facilities, if they have flood control benefits, and contract and join with the United States, this state and other governmental units for the purpose of constructing, operating and maintaining multipurpose groundwater recharge, underground storage and recovery and flood control facilities, except that a district shall not expend district funds for any underground storage and recovery facility that does not have flood control benefits.
18. Acquire real property by purchase, donation, dedication, exchange or other lawful means, except by eminent domain, in areas suitable for groundwater recharge projects.
19. Cooperate and join with other entities that engage in underground water storage and recovery projects under title 45, chapter 3.1, including multi-county water conservation districts and other political subdivisions.
20. Either alone, or by entering into any combination of contracts with this state, the United States, any other flood control district, a floodplain board, a municipality or other political subdivision, a government agency, an irrigation or agricultural improvement district or an association, corporation or individual, implement flood control enhancement solutions including:
 - (a) Assistance for property owners within the floodplain and through the elevation, bank stabilization and flood proofing of existing structures.
 - (b) Preservation and restoration of the floodplain.

(c) Maintenance of flood warning systems and associated flood response plans.

(d) Construction of bridges or other access over watercourses that are impassable to emergency vehicle traffic for fourteen or more days a year.

21. If a part of a parcel of land is to be taken for drainage, basins, impoundments or any other flood control related use and the board and the affected property owner determine that the remainder will be left in such a condition as to give rise to a claim or litigation concerning severance or other damage, acquire the whole parcel by purchase, donation, dedication, exchange, condemnation or other lawful means, and the remainder may be sold or exchanged for other properties needed for flood control use.
 22. Adopt and enforce civil penalties for violations of its regulations or ordinances and for unauthorized damage and interference to those district facilities that are authorized pursuant to this chapter.
 23. Pursuant to the authority prescribed in this chapter, appoint hearing officers to hear and determine actions.
 24. For any district that intends to take enforcement action pursuant to section 48-3615.01, adopt written rules of procedure for the hearing and review of decisions on actions prescribed by this chapter.
 25. Establish a board of hearing review to review decisions of hearing officers that are issued pursuant to section 48-3615.01. The board of hearing review shall consist of one member from each board of directors' district or the board of directors may authorize the citizens' flood control advisory board or the board of review to designate a like number of its members to serve as the board of hearing review.
 26. Authorize the chief engineer of the district to apply for and obtain administrative search warrants for entry and inspection from a local court of general jurisdiction to determine if violations of section 48-3609, 48-3613, 48-3614 or 48-3615 have occurred. The warrants shall be served by a peace officer as defined in section 1-215. A report of any inspections made pursuant to this section shall be prepared and made available in the records of the district and a copy mailed or otherwise delivered to the owner within fifteen days after the inspection of the owner's premises.
- D. The board shall adopt and enforce floodplain regulations as provided in section 48-3609.
- E. The board may adopt a fee schedule for review of applications for permits and variances from or interpretations of the floodplain regulations.
- F. The affirmative vote of a majority of the board of directors is necessary to approve any measure. One member may adjourn any meeting at which a quorum is not present.

- G. The board shall keep a proper written record of all of its proceedings, which shall be open to public inspection.
- H. The accounts of the district are subject to annual and other audits as provided by law.
- I. Section 9-403 does not apply to a flood control district organized under this article and section 9-402 does not apply when the district is selling property to this state or a political subdivision. Before selling any property to this state or a political subdivision of this state, the flood control district shall obtain an appraisal of the fair market value of the property by a person who is certified pursuant to title 32, chapter 36. If any property sold by the district to this state or a political subdivision without complying with section 9-402 is subsequently sold by this state or political subdivision as undeveloped property for a price exceeding the original sale price, the district shall be paid the difference between the original price and the subsequent sale price. For the purposes of this subsection, "political subdivision" means any incorporated city or town, county, school district, fire district, charter school, community college or university.
- J. The district and its employees and officers are not liable for any injury or property damage that may arise out of a plan or design for construction, maintenance or improvement to a dam, levee, berm, channel, canal or culvert or any other flood control project the district is authorized to plan, design, construct, maintain or improve when a reasonably adequate warning of any unreasonably dangerous hazard is given to potentially affected property owners in a manner that owners may take suitable precautions to protect themselves and their property. The warning shall include information for the property owner regarding a national flood insurance program. A warning is sufficient pursuant to this subsection if the warning is provided to a single property owner of the parcel, and notice to subsequent property owners is not required. The immunities prescribed by this subsection are in addition to and not in derogation or limitation of the immunities granted a district, employee or officer as otherwise provided by law and apply if either or both of the following conditions are met:
1. The project is funded wholly or partially by federal monies.
 2. The project is planned or designed to meet a recurrence interval approved by the district's board of directors.
- K. Section 9-402 does not apply to the grant of an easement on or a lease of district real property to any party other than this state or a political subdivision of this state as prescribed by this subsection. A district may authorize the grant of an easement on or a lease of district real property without public auction under the following conditions:
1. The district posts a notice in a conspicuous place on the affected property. The notice shall summarize the proposed easement or lease and shall provide information on the process for an interested person to request that

the proposed action be submitted to public auction. The notice shall be posted for at least fifteen days before the execution of the easement or lease.

2. The district posts a notice on the district's website that specifies the affected property, summarizes the proposed easement or lease and provides information on the process for an interested person to request that the proposed action be submitted to public auction. The notice shall be posted on the website for at least fifteen days before the execution of the easement or lease.
3. The district publishes in the local newspaper where the district regularly publishes notices at the beginning of the fifteen-day posting period a summary of the proposed easement or lease that provides information on the process for an interested person to request that the proposed action be submitted to public auction.
4. The district establishes a process that allows an interested person to request in writing that the proposed easement or lease be submitted to public auction. If during the fifteen-day posting period a person requests that the proposed easement or lease be submitted to public auction the district shall follow the procedure set forth in section 9-402.
5. For proposed leases only, the appraised value for the rental of the district real property is less than five thousand dollars per month.
6. The reimbursement to the district for the easement granted or the lease executed is not less than the appraised value of the property as determined by the district.

48-3604. Establishing zones in the district

- A. The board may divide the area of jurisdiction into two or more zones, the boundaries of which shall be described in a resolution adopted at a hearing held pursuant to subsection C.
- B. The board may alter the boundary lines of any previously established zone or zones pursuant to subsection C.
- C. Before establishing zones or altering their boundary lines, the board shall fix a date for a hearing, which shall be not less than twenty-one days nor more than forty days from the date of the resolution. Any interested citizen may appear at the hearing and be heard on any matter relating to the reasonableness of establishing the zones. Notice of the hearing shall be published once a week for three consecutive weeks in a newspaper of general circulation in the area of jurisdiction and zone and shall be posted in not less than thirty public places in the zone. The posting and the first date of the publications shall be not less than three weeks before the date of the hearing.

- D. The board shall meet at the time and place fixed for the hearing and may adjourn the hearing from time to time. At the hearing any interested owner of real property in the proposed zone may appear and be heard on any matter relating to the establishment of the zone and may allege that his real property in the proposed zone will not be benefited by the proposed improvements. If after the hearing it appears to the board that the establishment of the zone is necessary and desirable to carry out the objects and purposes of the district in the proposed zone and that all property in the zone will benefit by the establishment of the zone, the board shall establish the zone. If the board determines that any property in the proposed zone is not benefited, it shall delete the property from the zone. Thereupon the board shall adopt a resolution establishing the zone and shall file with the county recorder, the county assessor and the department of revenue a certified copy of the resolution and a map showing the zone and its boundaries. The board shall publish a copy of the resolution once a week for three consecutive weeks in a newspaper of general circulation in the area of jurisdiction and zone and shall post a copy of the resolution in not less than thirty public places in the zone.
- E. A party aggrieved by action of the board in establishing a zone may bring an action in the superior court in the county in which the area of jurisdiction is located to set aside the action of the board. The action shall be heard in a trial de novo. The action must be instituted not more than thirty-five days after the last publication or date of posting, whichever is later, of the copy of the resolution establishing the zone.

48-3605. Assistance for floodplain delineations; duties of director

- A. The director of water resources shall develop and adopt criteria for establishing the one hundred-year flood and delineating floodplains.
- B. If a district is required to delineate a floodplain pursuant to section 48-3609 and the floodplain has not been delineated with sufficient accuracy to allow adoption of regulations pursuant to section 48-3609, the district may request the director for assistance in delineating the floodplain.
- C. If sufficient monies have been appropriated, the director may either provide the engineering and technical services necessary to delineate the floodplains and floodway and determine water surface profile data associated with such delineations or disburse monies for such services to the requesting district.
- D. If a district chooses to be reimbursed for costs incurred to have floodplains delineated after August 3, 1984, monies appropriated to the director shall be disbursed on order of the director after application by the district showing the necessity and purpose of the expenditures for which reimbursement is required.
- E. The director may refuse to provide financial or technical assistance allowed by this section if, in the opinion of the director, such assistance is not necessary for the district to comply with section 48-3609.

48-3606. Assistance for topographic mapping

If sufficient monies have been appropriated, state monies or assistance allowed by this chapter may be provided to a district to aid in preparing topographic maps or to gather other elevation or channel cross-sectional data necessary, as determined by the director, for making hydraulic and hydrologic computations for determining floodplain and floodway limits.

48-3607. Director may contract for work

The director may contract with private persons, firms or other governmental agencies to carry out his duties under this article.

48-3608. Assistance in flood insurance program

- A. The director is designated as the state coordinator of the national flood insurance program to assist local jurisdictions in complying with the requirements of such program and state law.
- B. The director is designated as the state coordinator of the United States army corps of engineers floodplain management services program and shall coordinate floodplain information studies of federal, state and local agencies and make recommendations to such agencies.

48-3609. Floodplain delineation; regulation of use; federal requirements and definitions

- A. Except as provided in section 48-3610, the board within its area of jurisdiction shall delineate or may by rule require developers of land to delineate for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the director of water resources.
- B. Except as provided in section 48-3610, the board shall adopt and enforce regulations governing floodplains and floodplain management in its area of jurisdiction which shall include the following:
 - 1. Regulations for all development of land, construction of residential, commercial or industrial structures or uses of any kind which may divert, retard or obstruct floodwater and threaten public health or safety or the general welfare.
 - 2. Regulations which establish minimum flood protection elevations and flood damage prevention requirements for uses, structures and facilities which are vulnerable to flood damage. Regulations adopted under this section shall comply with state and local land use plans and ordinances, if any.

3. Regulations which provide for coordination by the district with all other interested and affected political subdivisions and state agencies.
 4. Regulations that require any residential structure built in a floodplain to be constructed so as to place the lowest floor elevation of the structure at or above the regulatory flood elevation, that require commercial or industrial structures to be flood proofed or elevated to or above the regulatory flood elevation and that prohibit any activity in a designated floodway, including fill, that would increase the water surface elevation during a base flood.
 5. Except as provided in subsection C of this section, regulations to allow a mobile home located in a floodplain on August 3, 1984 to be replaced by another mobile home if:
 - (a) The mobile home to be replaced was not damaged by a flood to more than fifty percent of its value before the flood.
 - (b) The replacement mobile home is elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation.
 6. Regulations that require all new placement of mobile homes to be anchored to prevent flotation, collapse or movement.
 7. Variance procedures to permit variances from the regulations that do not result in danger or damage to persons or property in floodplains in the area of jurisdiction. Variances may be granted only if special circumstances, such as size, shape, topography, location or surroundings of the property, would cause the strict application of the regulations to deprive the property of privileges enjoyed by similar property in the floodplain. A variance is subject to conditions to ensure that the variance does not constitute a grant of special privileges inconsistent with the limitations on similar property in the floodplain.
- C. A city or town with a population of less than one thousand five hundred persons that is located in a county with a population of less than seventy thousand persons and that has assumed the powers and duties for floodplain management pursuant to section 48-3610, subsection A may adopt as a part of the regulations required by subsection B, paragraph 5 of this section a regulation that allows a mobile home that qualifies under this subsection to be replaced with a mobile home that either is elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the base flood elevation or has a chassis supported by reinforced piers or other foundation elements of equivalent strength that are not less than thirty-six inches in height above grade and that are securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. A mobile home qualifies under this subsection if both of the following apply:

1. The mobile home was located in a mobile home park or subdivision on August 3, 1984 or before the effective date of the city's or town's initial floodplain management regulations, whichever date is earlier.
 2. No mobile home that is located in that mobile home park or subdivision has been damaged by a flood to more than fifty percent of its value before the flood.
- D. Waste disposal systems shall not be installed wholly or partially in a regulatory floodway.
- E. Water supply, water treatment and sewage collection and disposal systems built in a regulatory floodplain shall be designed to prevent or minimize floodwater infiltrating the systems and to prevent or minimize floodwater contamination during the base flood.
- F. Floodplain regulations enacted pursuant to this article may only be adopted after a public hearing at which parties in interest and other citizens have an opportunity to be heard. At least thirty days before the hearing, a notice of the time and place of the hearing shall be published in a newspaper of general circulation within the county or, if no newspaper of general circulation is regularly published, in a newspaper of general circulation nearest the area of jurisdiction. A notice of any hearing accompanied by a copy of each of the proposed regulations shall be furnished to the director at least thirty days before the date of the hearing. A copy of any regulation adopted by a district pursuant to this article shall within five days thereafter be filed with the director and with each political subdivision and municipal corporation in the area of jurisdiction.
- G. All development of land, construction of residential, commercial or industrial structures or future development within delineated floodplain areas is prohibited unless floodplain regulations have been adopted pursuant to this article for such floodplain area and are in full force and effect.
- H. Before adopting regulations the board may issue a special permit authorizing construction or development if the board finds that construction or development is not a danger to persons or property.
- I. Unless expressly provided, this article and any regulations adopted pursuant to this article do not affect:
1. Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for twelve months or destroyed to the extent of fifty percent of its value, as determined by a competent appraiser, any further use shall comply with this article and regulations of the district.

2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984 or on the date any regulations affecting such property take effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by fifty percent or more shall be either flood proofed or elevated to or above the regulatory flood elevation.
 3. Reasonable repair of structures constructed with the written authorization required by section 48-3613.
 4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to title 40, chapter 2, article 6.2.
- J. Within one hundred twenty days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of water resources.
- K. A flood control district or appropriate public agency which has failed to adopt or enforce floodplain regulations required by this section shall not be eligible for disaster relief identified by section 35-192, subsection D, paragraphs 3 and 5. The director of water resources shall advise the director of the division of emergency management within the department of emergency and military affairs of such failure to comply.
- L. A district and its agents may have reasonable access as provided by written authorization issued pursuant to section 48-3613 or if no authorization has been issued during business hours or in the case of an emergency, at any time, to enter and inspect any development on real property that is located in a floodplain in order to determine whether an owner is in violation of this chapter. This subsection does not authorize the inspection of any records or files on a site or the interior of any building. A district shall attempt to provide written notice to the owner at least forty-eight hours in advance that the real property is to be inspected and that the owner or the owner's agent may accompany the district inspector on the inspection. A district inspector shall comply with any safety requirements that may be applicable to a particular site. The district shall prepare a report of any inspections made pursuant to this subsection. The report shall be made available in the records of the district and a copy sent to the owner within thirty days after the inspection.
- M. The floodplain regulations adopted by a district pursuant to this chapter are intended to carry out the requirements of the national flood insurance program and any term not otherwise defined in this chapter shall have the meaning set forth in 44 Code of Federal Regulations parts 59 through 78, as effective on January 1, 2005.

48-3609.01. Watercourse master plans; definition

- A. If a district organized pursuant to this chapter has completed a watercourse master plan which includes one or more watercourses, and if the plan has been adopted by the board or by any other jurisdiction in that river or drainage system, the board and the governing body of each jurisdiction may adopt and shall enforce uniform rules for that river or drainage system within the jurisdiction using criteria that meet or exceed criteria adopted by the director of water resources pursuant to section 48-3605, subsection A.
- B. During the preparation of a watercourse master plan, record owners of real property in and immediately contiguous to the watercourse or watercourses included in the planning shall be publicly notified by the board or its agents so that the owners may have input to the planning process. In addition, aggregate mining operations recommendation committees organized pursuant to section 11-812, subsection D, if any, shall be notified.
- C. All watercourse master plans shall consider recharge techniques including gabions, swales, dry wells, sand tanks and small dams.
- D. This section does not apply to any city or town which has adopted a resolution assuming floodplain management and regulation within its area of jurisdiction as provided in section 48-3610 prior to July 1, 1990.
- E. A district that has prepared a watercourse master plan for a river may participate in the planning, establishment and operation of a recreational corridor channelization district established pursuant to chapter 35 of this title.
- F. For the purposes of this section, "watercourse master plan" means a hydraulic plan for a watercourse that examines the cumulative impacts of existing development and future encroachment in the floodplain and future development in the watershed on potential flood damages and that establishes technical criteria for subsequent development so as to minimize potential flood damages for all flood events up to and including the one hundred-year flood.

48-3609.02. Adoption of rules; procedures; exemptions; definition

- A. The board of directors shall adopt procedures for the adoption, amendment, repeal and enforcement of rules.
- B. The procedures shall contain at least the following provisions:
 - 1. The district shall provide at least two weeks' notice of a meeting at which the public is able to provide comments on the draft language of the proposed rule. The notice shall include the entire text of the draft proposed rule and it shall be made available to the public. The district shall accept written or verbal comments on the draft language.

2. The district shall provide at least two weeks' notice of a meeting at which the final text of the proposed rule is considered by the board of directors. The notice shall include the entire text of the final version of the proposed rule and it shall be made available to the public. At least one week before the meeting, the district shall provide the public with the district's written responses to written public comments and may provide written responses to verbal comments.
 3. The district shall provide the board of directors with copies of the public comments and the district's written responses to the public comments. If as a result of public comments or internal review, the board of directors determines that the text of a proposed rule requires substantial change, the board of directors shall issue a supplemental notice containing the changes to the proposed rule and shall provide for additional public comment before adoption.
- C. Notwithstanding this section, the board of directors may provide alternative procedures for the adoption of a rule if the board makes a finding that an emergency exists and adoption of the rule is necessary to protect the public health, safety or welfare, to avoid an imminent budget reduction or to avoid serious prejudice to the public interest. Within a reasonable time after adopting an emergency rule, the board of directors shall review the emergency rule to determine whether the rule should continue in effect or be terminated.
- D. Notwithstanding this section, the board of directors may provide alternative procedures for the adoption of a rule if the rule is required by state or federal law or regulation, and the basis for the requirement to adopt the rule is not the result of delay or inaction by the board of directors.
- E. Notwithstanding this section, the board of directors may provide alternative procedures for the expedited adoption, amendment or repeal of a rule if the expedited rulemaking does not increase the cost of regulatory compliance or reduce the procedural rights of regulated parties.
- F. A rule cannot be enforced without substantial compliance with this section, except those rules that were approved by the board of directors before July 3, 2015.
- G. The district may provide the notices required by this section on the district's website.
- H. The district may meet informally with any interested party for the purpose of discussing any proposed rule.
- I. This section does not apply to:
1. Substantive policy statements.
 2. Procedural documents that only affect the internal procedures of the district and do not impose additional requirements, conditions or penalties on regulated parties.

3. Use or adoption of any form whose contents or substantive requirements are consistent with an ordinance or statute, and any procedures for the execution or use of the form.
- J. For the purposes of this section, "rule" means a district statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of a district. Rule includes prescribing fees or the amendment or repeal of an existing rule but does not include intra-agency memoranda that are not delegation agreements.

48-3610. Assumption of powers and duties by cities and towns; resolution; definitions

- A. The powers and duties prescribed by section 48-3609 for floodplain management may be assumed by the governing body of an incorporated city or town within its area of jurisdiction if the incorporated city or town declares by resolution that it intends to assume the powers and duties, including the adoption of floodplain management regulations, pursuant to this article. An incorporated city or town currently engaged in floodplain management may continue to exercise the floodplain management powers and duties pursuant to this article in its area of jurisdiction by passing a resolution declaring its intent to do so before August 3, 1984.
- B. If the assumption of powers and duties under this section occurs:
 1. The city or town shall advise the district and any adjacent jurisdiction having responsibility for floodplain management in writing and provide a copy of any development plan of all applications for floodplain use permits or variances to develop land in a floodplain or floodway within one mile of the boundary between the city's or town's area of jurisdiction and the area of jurisdiction of the district. The city or town shall also advise the district and any adjacent jurisdiction having responsibility for floodplain management in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses outside the city's or town's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to any adjacent jurisdiction no later than three working days after having been received by the city or town.
 2. The district shall advise the city or town in writing and provide a copy of any development plan of any application for a floodplain use permit or variance to develop land in a floodplain or floodway within one mile of the boundary between the district's area of jurisdiction and that of the city or town. The district shall also advise the city or town in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses within the city's or town's area of jurisdiction. Written notice and a copy of the plan

of development shall be sent to any adjacent jurisdiction no later than three working days after having been received by the district.

- C. On passage of a resolution by the city or town assuming the powers and duties of floodplain management and regulation, the following apply:
1. The city or town is not liable for any aspect of a project that was approved, permitted, initiated or fully or partially constructed while under the floodplain authority of a district or county, including any obligation to complete, operate, maintain or repair the project.
 2. For any project for which a permit was issued by a district or county while it held floodplain management and that is subsequently under more stringent floodplain regulation under the authority of a city or town, the project is deemed a valid nonconforming use that is subject to the more stringent city or town regulation for subsequent substantial improvements or substantial repairs.
 3. For any violation of the district's or county's floodplain regulation authority before relinquishment, the district or county continues to be liable for the enforcement against and correction of the violation and the city or town is not liable.
- D. Nothing in this section shall act to delay approval of a development plan by a city, town, county or district.
- E. If the city or town assuming the floodplain management and regulation function declares by resolution that it no longer wishes the powers and duties, then the powers and duties shall be assumed by the district. On passage of a resolution by the city or town that the city or town is relinquishing its assumption of floodplain management and regulation, the following apply:
1. The district or the county is not liable for any aspect of a project that was approved, permitted, initiated or fully or partially constructed while under the floodplain authority of the city or town, including any obligation to complete, operate, maintain or repair the project.
 2. For any project for which a permit was issued by the city or town while it held floodplain management and that is subsequently under more stringent floodplain regulation under district authority, the project is deemed a valid nonconforming use that is subject to the more stringent district regulation for subsequent substantial improvements or substantial repairs.
 3. For any violation of the city or town's floodplain regulation authority before relinquishment, the city or town continues to be liable for the enforcement against and correction of the violation and the district and the county are not liable.
- F. If the assumption of powers and duties by a city or town occurs under this section, for purposes of applying this article to the city or town:

1. "Area of jurisdiction" means the lands within the municipal boundaries of the city or town.
2. "Board" means the governing body of a city or town.

48-3611. Citizens' flood control advisory board; qualification; functions

- A. The board of directors may appoint a citizens' flood control advisory board consisting of seven members. Five members shall be resident taxpayers and qualified electors of the district, at least three of whom shall be residents of the cities in the district. At least one of the board members who are residents of cities shall be a resident of the largest city in the district. The city engineer of the largest city in the district and the chief engineer or manager of a major irrigation or agricultural improvement district, or their representatives, shall be ex officio members of the advisory board with all rights and privileges granted to other board members.
- B. In appointing members of the advisory board the board of directors shall designate which appointive member shall serve for one year, which for two years, which for three years, which for four years and which for five years. Thereafter the term of each appointive member is five years except for a member appointed to an unexpired term.
- C. The citizens' flood control advisory board may request information from the chief engineer and general manager and district staff, engineering personnel from cities in the district and any other person with a knowledge of flood control practices. They may recommend the employment of consultants for the purpose of obtaining technical information and recommendations regarding flood control and floodplain management practices.
- D. The advisory board shall study the flood control, floodplain regulation, drainage and water conservation needs of the district, shall meet with and advise the board as requested by the board and may submit to the board reports and recommendations relating to such studies, but the recommendations are advisory only.

48-3612. Board of review

- A. The board of directors may establish a board of review, which may be the advisory board or a committee of the advisory board to sit in review and make decisions as follows:
 1. Interpret regulations adopted pursuant to this article if the meaning of a word, phrase or section is in doubt, if there is dispute between the appellant and district employees or if location of a floodway or floodplain is in doubt.
 2. Allow variances from the terms or regulations adopted pursuant to this article to the extent permitted by section 48-3609, subsection B, paragraph 7 if, owing to peculiar conditions, a strict interpretation would work an

unnecessary hardship and if in granting the variance the general intent and purposes of this article and the regulations will be preserved.

- B. Appeals to the review board may be taken by any person who feels that there is error or doubt in the interpretation of the regulation or that due to unusual circumstances attaching to his property an unnecessary hardship is being inflicted on him. The appeal shall state whether it is a plea for an interpretation or a variance and the grounds for the appeal.
- C. A person aggrieved in any manner by an action of the review board may within thirty days appeal to the district board.

48-3613. Authorization required for development in watercourses; exceptions; enforcement

- A. Except as provided in section 48-3625 and in this section, a person shall not engage in any development which will divert, retard or obstruct the flow of waters in any watercourse without securing written authorization from the board of the district in which the watercourse is located. Where the watercourse is a delineated floodplain no development shall take place in the floodplain without written authorization from the board of the district in which the floodplain is located.
- B. Written authorization is not required for nor shall the board prohibit:
 - 1. The construction of bridges, culverts, dikes and other structures necessary for the construction of public highways, roads and streets intersecting or crossing a watercourse.
 - 2. The construction of storage dams for watering livestock or wildlife and structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by title 45, chapter 6.
 - 3. Construction of tailing dams and waste disposal areas used in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in a watercourse from complying with and acquiring authorization from the board pursuant to regulations adopted by the board under this article.
 - 4. Other construction if it is determined by the board that written authorization is unnecessary.
 - 5. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under this article.

6. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.
 7. The construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.
- C. Before any construction authorized by subsection B of this section may begin, the person must submit plans for the construction to the board for review and comment.
 - D. In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.

48-3614. Declaration of public nuisance; abatement

All development located or maintained in a floodplain since August 8, 1973 in violation of this article or of floodplain regulations established by the board and without written authorization from the board is a public nuisance per se and may be abated, prevented or restrained by action of this state or any of its political subdivisions.

48-3615. Violation; classification; civil penalties; strict liability

- A. It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by section 48-3613. Where the watercourse is a delineated floodplain it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by section 48-3613.
- B. A person who violates subsection A of this section is guilty of a class 2 misdemeanor.
- C. A person who violates this chapter or rules adopted pursuant to this chapter may be assessed a civil penalty not to exceed the fine chargeable for a class 2 misdemeanor or, by agreement with the person in violation, a nonmonetary

penalty that serves the purposes of the district. Each day the violation continues constitutes a separate violation.

- D. A person who without written authorization from the board of directors damages or interferes with a facility that is owned, operated or otherwise under the jurisdiction of the district is strictly liable for both of the following:
1. Any actual damages to persons or property that is caused by the damage or interference.
 2. Payment of costs to the district for remediating the damage or interference.

48-3615.01. Notice of violation; hearing; final decision; civil penalty; injunctive relief

- A. If the chief engineer finds that a person has engaged or is engaging in development in the floodplain without a floodplain use permit, has engaged or is engaging in any development that is not in compliance with an active floodplain use permit or has damaged or interfered with facilities that are authorized pursuant to this chapter without written authorization of the board of directors, the chief engineer shall issue a notice of violation to the owner, occupant or manager of the real property on which the development is located or to the person who has damaged or interfered with the facilities. The notice of violation shall identify the violations observed and order the violator to cease and desist any ongoing activity that is not in compliance with the regulations adopted pursuant to this chapter or cease and desist any damage or interference that is not authorized by the board. The notice of violation shall include the date and time by which the person must mail or deliver a response to the notice of violation.
- B. On receipt of the notice of violation, the person may:
1. Admit the allegations by mailing or delivering to the chief engineer a form provided with the notice of violation or a written statement signed by the person in which the person admits the allegations, agrees to acquire any required permit and agrees to remedy the violation, damage or interference in accordance with the terms determined by the chief engineer.
 2. Deny the allegations by mailing or delivering to the chief engineer a form provided with the notice of violation or a written statement signed by the person denying the allegations and requesting a hearing on the matter. At the same time and with the same form and if the form contains the request by the person for a stay, the chief engineer shall issue a stay of any cease and desist order unless there is a threat to the public health or safety or to another person's property rights.

- C. On request for a hearing, the hearing officer shall set a date, time and place for a hearing and serve a notice of hearing on the person alleged to be in violation and provide a notice of the hearing to the chief engineer. Service of notice shall be by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the alleged violator, the chief engineer and every other party to the action.
- D. The hearing officer shall be appointed by the board of directors and may be an employee of the district. The notice of violation shall serve as the complaint and the request for hearing shall serve as the answer. Decisions of the hearing officer or by the board of hearing review shall be available to any party to the hearing. The board of directors shall adopt written rules of procedure for the hearing and review of hearings. These rules shall be adopted in the same manner as floodplain ordinances.
- E. At the hearing, a representative of the district shall present evidence of the violation described in the notice of hearing. The county attorney may present evidence on behalf of the district. The noticed party or attorney or other designated representative shall be given the opportunity to present evidence at the hearing. After completion of the hearing, the hearing officer shall issue a written finding and a recommendation for the appropriate measures to be taken to abate or ameliorate any harm or damage arising from the violation and for the imposition of any civil penalties attributed to the violation.
- F. The hearing officer's written finding shall be submitted to the chief engineer and the noticed party within thirty days after the date of the hearing. On receipt of the hearing officer's findings, determination and recommendation, the chief engineer shall issue a final decision and order. The chief engineer's final decision and order may be in any form as adopted by the board of directors pursuant to its authority under this chapter and may include a determination of violation, an order directing that measures be taken to abate or ameliorate any harm or damage arising from the violation and the imposition of a civil penalty. By agreement with the person in violation, the chief engineer may order a nonmonetary penalty that serves the purposes of the district.
- G. In a county with a population of less than one hundred seventy-five thousand persons, the district may adopt a procedure in which the hearing officer issues a written finding and a final decision and order. The hearing officer's final decision and order may be in any form as adopted by the board of directors pursuant to its authority under this chapter and may include a determination of violation, an order directing that measures be taken to abate or ameliorate any harm or damage arising from the violation and the imposition of a civil penalty. On recommendation of the chief engineer and with the agreement of the person in violation, the hearing officer may order a nonmonetary penalty that serves the statutory purposes of the district.

- H. On written request of any party who is subject to the decision and order of the chief engineer or hearing officer pursuant to this section, the board of hearing review may review any decision and order of the chief engineer or hearing officer. The written request for review shall be delivered to the clerk of the board of directors within fifteen days after the date of the final decision and order. The written request shall identify specifically the section or sections of the chief engineer's or hearing officer's final order that is requested to be reviewed by the board of hearing review.
- I. The board of hearing review shall set a time and date to hear the matter requested for review. The hearing shall be conducted based on the information presented to the chief engineer or hearing officer in issuing the final decision and order or, in an appeal from a determination of a violation by a hearing officer, the record before the hearing officer. The information presented to the chief engineer or hearing officer in issuing the final decision and order shall be made available to all parties on request. Based on the record before the board of hearing review, the board may deny, approve or modify the order of the chief engineer or the order of the hearing officer. The board shall issue a written order of its decision, including findings of fact and conclusions of law, and shall submit its final written order on the matter to the chief engineer within thirty days after completion of the hearing.
- J. If the person alleged to be in violation continues the violation after the chief engineer or hearing officer has issued a final decision and order or after the board of hearing review has completed its review pursuant to this section, the chief engineer may apply for a temporary restraining order or preliminary or permanent injunction from the superior court according to the Arizona rules of civil procedure. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator. The remedies prescribed by this section are cumulative and do not prevent the district from seeking injunctive relief at any time.
- K. The chief engineer may designate another person to carry out the chief engineer's powers and duties prescribed by this section and that designee is authorized to take all actions prescribed by this section in place of the chief engineer.

48-3615.02. [Judicial review; remedies](#)

The final decision of the board of hearing review is subject to judicial review pursuant to title 12, chapter 7, article 6. A district that has established civil penalties for violations of its regulations or ordinances or for damage or interference to its facilities is not precluded from pursuing other remedies provided by law.

48-3616. Survey and report of flood control problems and facilities; comprehensive program; adoption by board; hearing

- A. After a flood control district has been established in a county having a population of over three hundred thousand persons according to the latest federal decennial census, the board shall cause the chief engineer to make or have made by the flood control engineer or by qualified private engineers a survey of the flood control problems of the district and to prepare a report describing existing flood control facilities in the area, recommendations as to cooperation between the district and the owner or owners of existing facilities, recommendations and a preliminary plan for the construction or other acquisition of facilities to carry out the purpose of the district, a description of the property proposed to be acquired or damaged in performing the work, a program for carrying out the regulatory functions, a map showing the district boundaries and location of the work proposed to be done and property taken or damaged, an estimate of the cost of the proposed work and such other things as the board of directors may request. Before submission to the board of directors the report shall be submitted to the citizens' advisory board if one is established for its review and recommendations. The report shall be prepared at least every five years beginning in 1985 and shall indicate the past efforts of the district in eliminating or minimizing flood control problems and state the planned future work of the district to eliminate or minimize flood control problems.
- B. The chief engineer and his staff shall then prepare a comprehensive program of flood hazard mitigation, taking into consideration the recommendations submitted in the report. When a comprehensive program satisfactory to the board is available, the board shall tentatively adopt and schedule a public hearing on the program and the performance of the proposed work. The comprehensive program shall be reviewed and modified as necessary to reflect the past and future planned flood control works of the district. Notice of the hearing shall be given by publication once a week for two consecutive weeks in a newspaper of general circulation in the area of jurisdiction, the first of which shall be at least ten days before the date fixed for the hearing.
- C. The chief engineer and his staff shall prepare and submit to the board a five year capital improvement program in a form approved by the board. The program and annual extensions shall be submitted to the board at least three months before the final date for submission of the annual budget. The program shall separately identify capital improvements for engineering, rights-of-way and land acquisition and construction with such supporting explanations, cost estimates and completion schedules as the board may require. The program shall be annually reviewed for endorsement by the citizens' advisory board if one is established.

D. After a flood control district has been established in a county with a population of fewer than three hundred thousand persons, the chief engineer may conduct a survey of flood control problems, prepare a comprehensive program for flood control and a five year capital improvement program pursuant to this section. He shall at least make an assessment of flood control problems in the area of jurisdiction and make an annual report of his findings and recommendations for dealing with them to the board.

48-3617. Development of flood control plan by director of water resources

- A. On the application of a district organized pursuant to this article, and subject to available appropriations, the director of water resources shall conduct a study and, if deemed justified by the director, develop a flood control plan to address any flood control problem in the area of jurisdiction of the district.
- B. The director shall conduct such studies and develop such plans for counties having a population of fewer than one million persons. If personnel are available and if monies are specifically authorized by the legislature, the director may conduct such studies and develop such plans for counties having a population of one million or more persons. The director shall perform his responsibilities under this section in such a manner as to spread the benefits of such assistance among all counties of this state.
- C. In operating pursuant to this section, the director may utilize his own engineers and resources or may contract for outside consulting engineers and resources.
- D. Any plan developed by the director pursuant to this section shall, to the extent practicable, resolve the particular flood control or regulation problem. The practicality of any solution to a flood control or regulation problem shall be determined jointly by the director and the flood control district based on cost effectiveness and design criteria developed by the director.

48-3618. Resolution calling for bond election; notice; manner of conducting election

- A. After a county flood control district has been established pursuant to this article, the board may order that facilities be acquired, constructed, operated and maintained from available monies of the district. If sufficient monies are not available, the board may call an election of the electors of the district qualified to vote under article VII, section 13, Constitution of Arizona, to obtain approval for incurring bonded indebtedness of the district to obtain revenue to acquire by purchase, construction or otherwise all or any portion of such facilities.
- B. After authority has been acquired for instituting a project within a zone or a joint project by two or more contiguous zones in a district established under this article, the board may order that the facilities approved in the project or joint project be acquired, constructed, operated and maintained from the monies held by the district treasurer for expenditure in the respective zone or

zones. If sufficient monies are not available, the board may call an election of the electors of the zone, or of the zones for which a joint project has been authorized, who are qualified to vote under article VII, section 13, Constitution of Arizona, to obtain approval for incurring bonded indebtedness to obtain revenue to acquire by purchase, construction or otherwise all or any portion of the facilities.

- C. The board resolution shall set forth the purpose of the indebtedness, the amount of the indebtedness, the maximum number of years for which the indebtedness is to be incurred, the maximum rate of interest to be paid and the date of the election and shall list the voting places to be used at the election. The election must be held on the first Tuesday following the first Monday in November as prescribed by section 16-204, subsection B, paragraph 1, subdivision (d). The resolution constitutes a notice of the election and shall be published once each week for three consecutive weeks in a newspaper of general circulation in the area of jurisdiction, or if there is no such newspaper, then notice shall be posted in not less than three public places within the area of jurisdiction, the first of which publications shall be not less than twenty days before the date fixed for the election. Publication on the same day of each week is sufficient whether or not a daily newspaper is used for the publication.
- D. Except as otherwise expressly provided, the election shall be called and held and the results canvassed in the manner provided by the laws of this state for holding elections on the issuance of bonds by counties for general county purposes. For purposes of the election the board may treat the entire district as a single precinct or may divide the district into such precincts and fix such polling places as it may see fit.
- E. If a majority of the votes cast on the proposition is in favor of incurring the bonded indebtedness proposed, the bonds so authorized may be sold and issued by the board of directors either at one time or in blocks.

48-3619. Form, issuance and sale of bonds; limitation on bonded indebtedness; payment of bonds and interest

- A. The bonds authorized pursuant to section 48-3618 shall be issued for the general purpose or purposes provided in the voted proposition, which may be the acquisition by purchase, construction or otherwise of any facilities designed to further the objects or purposes of the district or for improving and extending any such facilities, or any combination of such purposes, and may include the payment of all legal, engineering and fiscal expenses reasonably incurred in connection with the authorized purposes of the bonds and with the authorization and issuance of the bonds as well as expenses incurred in connection with the original organization of the district. The bonds shall be fully negotiable for all purposes and shall never be issued in an amount which:

1. Together with all other existing bonded indebtedness of the district then outstanding, exceeds in total principal amount five per cent of the assessed valuation of taxable property in the district as computed from the last assessment roll for county purposes completed before issuing the bonds.
 2. Together with all other existing bonded indebtedness of a zone then outstanding for which the property of a zone is subject to tax under this article, exceeds in total principal amount five per cent of the assessed valuation of taxable real property in the zone as computed from the last assessment roll for county purposes completed before issuing the bonds.
- B. The limitation on bonded indebtedness does not apply in those districts or zones which embrace portions of two or more irrigation districts which have water delivery contracts with the United States pursuant to federal reclamation laws.
- C. The bonds are the general obligations of the district, zone or zones and the full faith, credit and resources of the district, zone or zones shall be pledged for their payment. The board shall certify to the board of supervisors to levy annually on all taxable real property in the district, zone or zones secondary property taxes fully sufficient without limitations as to rate or amount to pay principal of and interest on such bonds as principal and interest fall due.
- D. The bonds shall mature at such time or times not more than forty years from their date, shall bear interest at such rate or rates set by the accepted bid which shall not exceed the maximum rate of interest stated in the resolution calling the election, shall be payable at such place or places within or without this state and generally shall be issued in such manner and with such details as may be provided in the resolution. The bonds may be made callable on any interest payment date at a premium not to exceed three per cent of their face amount. If the district has any source of revenues other than from the proceeds of taxes, all or such part of the revenues as the board of directors may deem advisable may, in the discretion of the board, be pledged to the payment of the bonds.
- E. The board may provide in the resolution authorizing bonds that the bonds shall recite that they are issued under authority of this article. Such recital conclusively imports full compliance with this article and all bonds issued containing the recital are incontestable for any cause whatsoever after their delivery for value.
- F. The board may provide for the publication of any resolution or other proceeding adopted by the board in a newspaper of general circulation in the area of jurisdiction. For a period of thirty days after the date of publication any person in interest may contest the legality of the resolution or proceedings of any bonds which may be authorized, or the provisions made for the security and payment of the bonds, and after such time no person has any cause of action to contest the regularity, formality, legality or source of payment for any cause whatsoever.

- G. Subject to this section, the board shall declare by resolution its intention to sell such bonds and shall fix the date, hour and place of sale and shall give notice of the sale of the bonds by publication for at least ten days in a newspaper of general circulation in the area of jurisdiction and in any other newspaper as the board directs. The notice shall state that sealed bids only will be received by the board for the purchase of the bonds, and the bonds will be awarded to the highest responsible bidder at a price of not less than par and accrued interest, and that a good faith check equal to two per cent of the principal amount of bonds to be sold must accompany all sealed bids. The board may reject any and all bids. The bonds may be in denominations or multiples of one thousand dollars and shall be signed by such officers of the board as are designated by resolution adopted by the board. Any bonds bearing the signature of officers in office at the date of signing are valid and binding for all purposes, notwithstanding that before their delivery any such person whose signature appears on the bonds may no longer be an officer.
- H. Bonds may be issued by the district after the issuance of all of the first bonds but must be issued pursuant to the making of a supplemental engineer's program and a hearing as prescribed in this section.
- I. Bonds issued under authority of this article do not enjoy a priority over other bonds issued under this article by reason of time of authorization or issuance. Bonds issued under this article are not taxable by this state or by any county, city, town or other political subdivision of this state.
- J. All bonds issued under this article are legal investments for all trust funds, including those under jurisdiction of this state, and for the funds of all insurance companies, banks and trust companies, for the investment of state monies and for all sinking funds under the control of this state and political subdivisions of this state.

48-3620. Certification and levy of taxes; limitation

- A. The district shall annually, not less than fifteen days before the first day of the month in which the county board of supervisors is required by law to levy county taxes, certify to the board of supervisors:
1. The amount of taxes to be levied in each year on the taxable real property in the district as it considers necessary or appropriate to pay the expenses of administering the district and maintaining and operating the district's flood control system, to carry out its regulatory functions and to carry out any of the objects and purposes of this article of common benefit to the district. The maintenance and operation tax proceeds not used for current expenses of maintenance and operation may either be paid into a reserve to be accumulated for such purpose or may be used for extending, improving and constructing the flood control system including acquiring rights-of-way.

2. The amount of taxes to be levied in each year on all taxable real property in each zone or in any of the zones into which the district has been divided, according to the benefits derived or to be derived by the respective zones, to pay the cost and expenses of carrying out any of the objects or purposes of this article of special benefit to the respective zones, including acquiring, constructing, maintaining, operating, extending, repairing or otherwise improving any or all flood control works or improvements in the respective zones and including acquiring rights-of-way. No revenues derived from any of the several zones from the taxes levied under this section may be expended for acquiring, constructing, maintaining, operating, extending, repairing or otherwise improving any works or improvements located in any other zone, except under section 48-3620.01.
 3. The amount of secondary property taxes necessary to be levied to pay the principal and interest falling due during the ensuing year on, or to provide a sinking fund for, any bonds issued pursuant to section 48-3619.
- B. The taxes collected pursuant to this section shall be paid to the district treasurer and used solely for the purpose for which they were levied.
 - C. The board of supervisors at the time of levying general county taxes shall levy and cause to be collected in the manner prescribed by law for county taxes a property tax or taxes on the taxable real property in the district, zone or zones sufficient to provide the amounts set forth in subsection A of this section.
 - D. If the district fails to certify to the board of supervisors any of the amounts of taxes necessary to be levied as required by this section, the board of supervisors shall ascertain the amount which should have been certified and shall levy the tax sufficient to produce such amount.
 - E. If a district is located in a county having a population of less than six hundred thousand persons according to the most recent United States decennial census, beginning with the 1993 tax year, the aggregate taxes levied in any year under this article by the district for the purposes listed in subsection A, paragraph 1 of this section shall not exceed twenty per cent of the county primary property tax rate exclusive of the state equalization assistance property tax rate or fifty cents per one hundred dollars of assessed valuation, whichever is greater. The aggregate taxes levied for any year under this article on property in a zone for the purposes listed in subsection A, paragraph 2 of this section in a district located in a county having a population of less than six hundred thousand persons according to the most recent United States decennial census, if added to the aggregate taxes, if any, levied for the purposes listed in subsection A, paragraph 1 of this section, shall not exceed twenty per cent of the county primary property tax rate exclusive of the state equalization assistance property tax rate or fifty cents per one hundred dollars of assessed valuation, whichever is greater. The taxes levied under this article in a district located in a county having a population of less than six hundred thousand persons

according to the most recent United States decennial census may exceed the limits prescribed by this subsection if approved by a majority of the qualified electors of the district voting in a regular general election held pursuant to title 16, chapter 2, article 2 or at a special election held pursuant to title 16, chapter 2, article 3. The ballot for the election shall specifically state the proposed rate and the fiscal year or years in which the excess tax levies are proposed to be assessed.

48-3620.01. [Joint projects by zones](#)

The board of directors may institute joint projects by two or more contiguous zones for acquiring, financing, constructing, maintaining, operating, extending, repairing or otherwise improving any flood control work or improvement located or to be located in one or more of such zones and of common benefit to the zones.

48-3620.02. [Authority for zone projects](#)

- A. For the purpose of acquiring authority to proceed with any project of special benefit to a zone, as well as for the purpose of acquiring authority to proceed with any joint project by any two or more contiguous zones, as provided by section 48-3620.01, the board of directors shall adopt a resolution stating its intention to undertake the zone project or joint project, together with the engineering estimates of the project's cost to be borne by any participating zones, fixing a time and place for a public hearing on the resolution once a week for two consecutive weeks in a newspaper of general circulation in the affected zone or zones, the first of which publications shall be at least ten days before the date fixed for the hearing or, if there is no such newspaper, by posting the notice for two consecutive weeks before the hearing in three public places in each of the affected zones. The notice shall designate a public place in each of the zones where a copy of the map or maps of any joint project may be seen by an interested person.
- B. At the time and place fixed for the hearing or at any time to which the hearing may be continued, the board shall consider all written and oral objections to the proposed project or joint project. On the conclusion of the hearing, the board may abandon or proceed with the proposed project or joint project unless written protests against the proposed project or joint project, signed by a majority in number of the electors, as defined in article VII, section 13, Constitution of Arizona, of the project zone or any of the zones in a proposed joint project, are filed with the board of directors before the conclusion of the hearing, in which event the project or joint project shall be abandoned.
- C. After a zone project or a joint project has been authorized and adopted, the board may, without the necessity of any further hearing, make such changes in the project as it may deem desirable to facilitate the program, consistent with the objects, purposes and powers of the district prescribed by section 48-3603.

48-3621. Right-of-way

A right-of-way in, under, along or across a public highway, public street or public property within a flood control district shall be granted to the district if found by the board to be necessary or convenient for performing any work authorized by this article and if designs for district works and designs for highway, street and public property improvements are mutually satisfactory to controlling public agencies. If necessary to carry out such work, the board may bring actions to condemn any needed property, which suits may be brought under any statute applicable to the bringing of condemnation suits by municipal corporations or other political subdivisions of this state.

48-3622. Permission required to connect to storm water drain; fee; violation; classification

A person desiring to make a connection to any storm water drain of a flood control district or to cause floodwaters or storm or other waters to be emptied into any ditch or drain of the district shall first apply to the district for permission to make the connection. The district may require the connection to be made in such manner as it directs and may impose reasonable conditions and such reasonable connection fee as it deems proper or, if reasonably justified by the circumstances, may refuse permission. In addition, the district may require any action or impose any restriction that the district considers reasonably necessary to meet the district's obligations, if any, to comply with local, state or federal water quality laws. A person making a connection which causes floodwaters to be so discharged without first having obtained permission is guilty of a class 2 misdemeanor.

48-3623. Authority to issue refunding bonds; procedure; disposition of proceeds

Any bond issued under this article may be refunded pursuant to resolution adopted by the board of directors in the manner provided in this article for the issuance of other bonds, except that an engineer's report or hearing need not be obtained or held, and it is not necessary to submit the question of the issuance of the refunding bonds at an election. Refunding bonds so authorized may be sold and the proceeds of sale applied to or escrowed for the payment of the bonds to be refunded in such manner as may be provided in the authorizing resolution, or may be delivered in exchange for the bonds to be refunded, or may be in part sold and in part exchanged. No bonds may be refunded under this section unless they either mature or are callable for redemption under their terms within twelve months from the date of the issuance of the refunding bonds or unless the holders voluntarily surrender them for exchange or payment.

48-3624. Cooperation in flood control projects

A district may cooperate with the United States and this state or any instrumentality, department, agency or political or municipal subdivision of either in the construction, maintenance and operation of flood control projects and the enforcement of this article and regulations adopted pursuant to it. To that end, the district may:

1. Enter into appropriate agreements.
2. Acquire and provide without cost to the cooperating entity land, easements, rights-of-way and services necessary for the construction of flood control projects and the regulation of floodplains.
3. Hold and save any cooperating entity free from any claim for damages arising from the construction, maintenance and operation of flood control projects and the regulation of floodplains.
4. Maintain and operate all works according to regulations prescribed by the cooperating entity.
5. Establish and enforce flood channel limits and floodplain regulations, if any, satisfactory to the cooperating entity.

48-3625. Limitation on powers

A county flood control district may not exercise any power or authority granted by this article, nor may it undertake or cooperate in planning, authorizing, constructing, acquiring, extending, improving, maintaining or operating any flood control structures, dam systems or projects on any portion of a watershed supplying water to any dam and reservoir existing within this state having a designed water storage capacity of fifty thousand acre feet or more, or to any existing diversion dam and canal system having facilities within this state designed to divert and carry not less than one thousand cubic feet per second, without first obtaining the written consent of the agency, district, association, company or organization owning or operating or being served by such dam, reservoir, diversion dam or canal system. Such consent, however, is only required from irrigation districts and agricultural improvement districts organized pursuant to the laws of this state and defined under this title, and any other associations or organizations operating such dams, reservoirs, diversion dams and canal systems as part of a federal reclamation project. This section does not prohibit the district from adopting and enforcing such regulations as are duly enacted pursuant to this article.

48-3626. Compliance; enforcement

If any board, district or governing body fails to comply with or violates the requirements of this article, the attorney general shall take prompt and appropriate legal action to compel compliance by the jurisdiction and its elected officials. The attorney general may, in his discretion, seek the following remedies under this section:

1. An order compelling the offending jurisdiction and its elected officials to comply with the requirements of this article or cease the violation.
2. An order vesting the powers and duties under this article in the district in the event that an incorporated city or town has assumed the powers and duties pursuant to section 48-3610.

48-3627. Reimbursement for county services

Services provided by a county to a county flood control district are subject to reimbursement pursuant to section 11-251.06.

48-3628. Condemnation actions; interest

Interest on a judgment in a condemnation proceeding instituted by the district or by a power district or an agricultural improvement district pursuant to chapter 11 or 17 of this title, including interest that is payable pursuant to section 12-1123, subsection B, shall be calculated for each month or portion of a month that interest is owed and shall be either:

1. The prime rate charged by banks on short-term business loans as determined for publication in the bulletin of the board of governors of the federal reserve system, as of the first day of that month.
2. In the absence of a determination by the board of governors of the federal reserve system, calculated in the same manner based on comparable data as determined by the United States department of commerce, bureau of economic analysis, for publication in "survey of current business".
3. If the prime rate cannot be determined from publication as provided in paragraph 2 of this section, determined by a federal agency that is annually designated by the respective district and that makes and publishes data sufficient to determine the prime rate of interest.

Article 2 Flood Control District Regulations (SB 1598/HB 2443)

48-3641. Definitions

In this article, unless the context otherwise requires:

1. "District" means a district organized pursuant to article 1 of this chapter.
2. "Emergency" means a situation that creates an immediate threat to the health or safety of a person or property caused by flood, earthquake, hurricane, tornado, explosion, fire or other catastrophe.
3. "License" includes the whole or part of any district permit, certificate, approval, registration, charter or similar form of permission required by law.
4. "Licensing" includes the district process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
5. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision or a public or private organization of any character.
6. "Request for corrections" means seeking a technical or clarifying correction from an applicant who has submitted an administratively complete application for a license.
7. "Substantive policy statement" means a written expression that is only advisory and that informs the general public of a district's current approach to, or opinion of, the requirements of the ordinances or regulations, including, if appropriate, the district's current practice, procedure or method of action based on that approach or opinion. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the district and do not impose additional requirements or penalties on regulated parties or confidential information.
8. "Working day" means a twenty-four hour period excluding weekends and legal holidays.

48-3642. Regulatory bill of rights

To ensure fair and open regulation by districts, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against a district in a court proceeding regarding a district decision as provided in section 12-348.
2. Is entitled to receive information and notice regarding inspections as provided in section 48-3643.
3. Is entitled to have a district not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized as provided in section 48-3644.

4. May have a district approve or deny the person's license application within a predetermined period of time as provided in section 48-3645.
5. Is entitled to receive written or electronic notice from a district on denial of a license application that:
 - (a) Justifies the denial with references to the statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement on which the denial is based as provided in section 48-3645.
 - (b) Explains the applicant's right to appeal the denial as provided in section 48-3645.
6. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 48-3646.
7. May inspect all ordinances, regulations, rules and substantive policy statements of a district, including a directory of documents, at the office of the district or a district website as provided in section 48-3647.
8. Unless specifically authorized, may expect districts to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the maximum extent practicable as provided in section 48-3644.
9. May file a complaint with the board of directors concerning an ordinance, rule, regulation or substantive policy statement that fails to comply with this section.
10. As provided in section 48-3644, is entitled to have a district not request or initiate discussions about waiving any of the rights prescribed in this section.
11. May participate in the rule development process as provided in section 48-3609.02, including providing written or verbal comments on proposed rules to the district and having the district address comments as provided in section 48-3609.02.

48-3643. Inspections; applicability

(Eff. 7/1/12)

- A. A district inspector or regulator who enters any premises of a regulated person for the purpose of conducting an inspection shall:
 1. Present photo identification on entry of the premises.
 2. On initiation of the inspection, state the purpose of the inspection and the legal authority for conducting the inspection.
 3. Disclose any applicable inspection fees.
 4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the district inspector or regulator on the premises, except during confidential interviews.

5. Provide notice of the right to have:
 - (a) Copies of any original documents taken from the premises by the district during the inspection if the district is permitted by law to take original documents.
 - (b) A split or duplicate of any samples taken during the inspection if the split or duplication of any samples, if appropriate, would not prohibit an analysis from being conducted or render an analysis inconclusive.
 - (c) Copies of any analysis performed on samples taken during the inspection.
 6. Inform each person whose conversation with the district inspector or regulator during the inspection is tape recorded that the conversation is being tape recorded.
 7. Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.
- B. On initiation of, or two working days before, an inspection of any premises of a regulated person, a district inspector or regulator shall provide the following in writing or electronically:
1. The rights described in subsection A of this section.
 2. The name and telephone number of a district contact person available to answer questions regarding the inspection.
 3. The due process rights relating to an appeal of a final decision of a district based on the results of the inspection, including the name and telephone number of a person to contact within the district and any appropriate municipality, county, district or state government ombudsman.
- C. A district inspector or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section indicating that the regulated person or on-site representative of the regulated person has read the writing and is notified of the regulated person's or on-site representative of the regulated person's inspection and due process rights. The district shall maintain a copy of this signature with the inspection report. Unless the regulated person, at the time of the inspection, is informed how the report can be located electronically, the district shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section, the district inspector or regulator shall note that fact on the writing.
- D. A district that conducts an inspection pursuant to this section, shall give a copy of, or provide electronic access to, the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.
 2. Notwithstanding any other state law, within thirty working days after the inspection.
 3. As otherwise required by federal law.
- E. The inspection report shall contain deficiencies identified during an inspection. Unless otherwise provided by law, the district may provide the regulated person an opportunity to correct the deficiencies unless the district determines that the deficiencies are:
1. Committed intentionally.
 2. Not correctable within a reasonable period of time as determined by the district.
 3. Evidence of a pattern of noncompliance.
 4. A risk to any person, the public health, safety or welfare or the environment.
- F. If the district allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the district when the deficiencies have been corrected. Within thirty working days after receipt of notification from the regulated person that the deficiencies have been corrected, the district shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance, unless it is not possible due to conditions of normal operations at the premises. If the regulated person fails to correct the deficiencies or the district determines the deficiencies have not been corrected within a reasonable period of time, the district may take any enforcement action authorized by law for the deficiencies.
- G. A district decision pursuant to subsection E or F of this section is not an appealable district action.
- H. At least once every month after the commencement of the inspection a district shall provide a regulated person with an update, in writing or electronically, on the status of any district action resulting from an inspection of the regulated person. A district is not required to provide an update after the regulated person is notified that no district action will result from the district's inspection or after the completion of district action resulting from the district's inspection.
- I. This section does not authorize an inspection or any other act that is not otherwise authorized by law.
- J. This section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure requirements. This section does not apply:

1. To criminal investigations and undercover investigations that are generally or specifically authorized by law.
 2. If the district inspector or regulator has reasonable suspicion to believe that the regulated person may be or has been engaged in criminal activity.
 3. If the district inspector or regulator reasonably believes that an emergency exists.
 4. To inspections conducted pursuant to section 48-3609, subsection L of persons not licensed by the district or which are not necessary for the issuance of a license.
- K. If a district inspector or regulator gathers evidence in violation of this section, the violation shall not be a basis to exclude the evidence in a civil or administrative proceeding, if the penalty sought is the denial, suspension or revocation of the regulated person's license or a civil penalty of more than one thousand dollars.
- L. Failure of a district employee to comply with this section:
1. Constitutes cause for disciplinary action or dismissal pursuant to adopted district personnel policy.
 2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.
- M. A district may adopt rules or ordinances to implement this section.
- N. This section:
1. Shall not be used to exclude evidence in a criminal proceeding.
 2. Does not apply to district inspections that are requested and scheduled by the regulated person.

48-3644. Prohibited acts by district and employees; enforcement; notice

- A. A district shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, regulation, ordinance, executive order or delegation agreement. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition.
- B. Unless specifically authorized, a district shall avoid duplication of other laws or executive orders that do not enhance regulatory clarity and shall avoid dual permitting to the maximum extent practicable.
- C. This section does not prohibit district flexibility to issue licenses or adopt ordinances or regulations.

- D. A district shall not request or initiate discussions with a person about waiving that person's rights.
- E. This section may be enforced in a private civil action and relief may be awarded against the district. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against the district for a violation of this section.
- F. A district employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the district's adopted personnel policy.
- G. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.
- H. A district shall prominently print the provisions of subsections A, B, C, D, E, F and G of this section on all license applications.
- I. The licensing application may be in either print or electronic format.

48-3645. Licensing time frames; compliance; consequence for failure to comply with time frame; exemptions; definitions

- A. For any new ordinance or regulation requiring a license, a district shall have in place an overall time frame during which the district will either grant or deny each type of license that it issues. The overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame and shall be posted on the district's website, if the district maintains a website.
- B. On or before December 31, 2012, a district that issues licenses required under existing ordinances or codes shall have in place an overall time frame during which the district will either grant or deny each type of license that it issues. The overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame and shall be posted on the district's website, if the district maintains a website. Districts shall prioritize the establishment of time frames for those licenses that have the greatest impact on the public.
- C. In establishing time frames, districts shall consider all of the following:
 - 1. The complexity of the licensing subject matter.
 - 2. The resources of the district.
 - 3. The economic impact of delay on the regulated community.
 - 4. The impact of the licensing decision on public health and safety.
 - 5. The possible use of volunteers with expertise in the subject matter area.
 - 6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the district and the regulated community.
 8. Increased district flexibility in structuring the licensing process and personnel including:
 - (a) Master planned communities.
 - (b) Suspension of the substantive and overall time frames for purposes including delays caused by the need for public hearings, state or federal approvals or approvals from public utilities on residential or commercial development projects.
 9. That the substantive review and overall time frames do not include the time required by the applicant to obtain other nondistrict licenses or to participate in meetings as required by law.
- D. A district shall issue a written or electronic notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame. If the permit sought requires approval of more than one department of the district, each department may issue a written or electronic notice of administrative completeness or deficiencies.
- E. If a district determines that an application for a license is not administratively complete, the district shall include a comprehensive list of the specific deficiencies in the written or electronic notice provided pursuant to subsection D of this section. If the district issues a written or electronic notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the district receives the missing information from the applicant. The district may issue an additional written or electronic notice of administrative completeness or deficiencies based on the applicant's submission of missing information. If the permit sought requires approval of more than one department of the district, each department may issue an additional written or electronic notice of administrative completeness or deficiencies based on the applicant's submission of missing information.
- F. If a district does not issue a written or electronic notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If a district issues a timely written or electronic notice of deficiencies, an application shall not be complete until all requested information has been received by the district. A district may consider an application withdrawn if by fifteen days or longer after the date of the notice, as established by the district, the applicant does not supply the documentation or information requested or an explanation of why the information cannot be provided within the established time period.

- G. During the substantive review time frame, a district may make one comprehensive written or electronic request for corrections. If the district identifies legal requirements that were not included in the comprehensive request for corrections, the district may amend the comprehensive request for corrections once to include the legal requirements and the legal authority for the requirements. If the permit sought requires approval of more than one department of the district, each department may issue a comprehensive written or electronic request for corrections. If the applicant fails to resolve an issue identified in a request for corrections, the district may make supplemental written or electronic requests for corrections that are limited to issues previously identified in a comprehensive request for corrections. If a district issues a comprehensive written or electronic request or a supplemental request for corrections, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the district receives the corrections from the applicant. If an applicant requests significant changes, alterations, additions or amendments to an application that are consistent with the purposes of the original application and that are not in response to a request for correction, a district may make one additional comprehensive written or electronic request for corrections and may have no more than an additional fifty per cent of the substantive review time frame as established by the district for that license to grant or deny the license. Nothing shall prevent communication between a district and an applicant regarding a comprehensive written or electronic request for corrections or a supplemental request for corrections. A district may consider an application withdrawn if, by thirty days or more after the date of notice, as established by the district, the applicant does not supply the documentation or information requested or an explanation of why the information cannot be provided within the established time period.
- H. Nothing shall prevent the district from continuing to process the application during the suspension of the substantive review time frame and overall time frame.
- I. By mutual written or electronic agreement, a district and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed fifty per cent of the overall time frame.
- J. Unless a district and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to subsection I of this section, a district shall issue a written or electronic notice granting or denying a license to an applicant. If a district denies or withdraws an application for a license, the district shall include in the written or electronic notice at least the following information:
1. Justification for the denial or withdrawal with references to the statutes, ordinances, executive orders, substantive policy statements or delegation agreements on which the denial or withdrawal is based.

2. An explanation of the applicant's right to appeal the denial or withdrawal. The explanation shall include the number of working days in which the applicant must file a protest challenging the denial or withdrawal and the name and telephone number of a district contact person who can answer questions regarding the appeals process.
 3. An explanation of the applicant's right to resubmit the application, the total amount of fees that will be assessed if the applicant resubmits the application and the method in which the fees were calculated.
- K. If a district does not issue to the applicant the written or electronic notice granting or denying a license within the overall time frame or within the mutually agreed upon time frame extension, the district shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any fees that have not yet been paid. The district shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty working days after the expiration of the overall time frame or the time frame extension. The district shall continue to process the application. Notwithstanding any other statute, the district shall make the refund from the fund in which the application fees were originally deposited. The right to receive a refund of fees charged for reviewing and acting on the application for the license may not be waived by the applicant.
- L. If an application for a license is denied because revisions or corrections were not submitted or considered within the allowed time frame, or withdrawn, and the applicant resubmits the application for the same purposes with only revisions or corrections to the original application, the district shall not assess any additional fees that exceed fifty per cent of the original permit fee that has not been refunded to the applicant provided that the application is submitted before the time of destruction of the original application file pursuant to section 41-151.15. This subsection does not apply to license applications that were denied for disqualifying criminal convictions or that were submitted fraudulently.
- M. This section does not apply to a license that is either:
1. Issued within seven working days after receipt of the initial application or a permit that expires within twenty-one working days after issuance.
 2. Necessary for the construction or development of a residential lot, including swimming pools, hardscape and property walls, subdivisions or master planned community.
- N. For the purposes of this section:
1. "Master planned community" means development by one or more developers of real estate that consists of residential, commercial, education, health care, open space and recreational components and that is developed pursuant to a long-range, multiphase master plan providing comprehensive land use planning and staged implementation and development.

2. "Subdivision" means improved or unimproved land or lands divided for the purposes of financing, sale or lease, whether immediate or future, into four or more lots, tracts or parcels of land, or, if a new street is involved, any such property that is divided into two or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two parts. Subdivision includes any condominium, cooperative, community apartment, townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

48-3646. [License application process](#)

A district that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of a district contact person who can answer questions or provide assistance throughout the application process.
4. The website address and any other information, if applicable, to allow the regulated person to utilize electronic communication with the district.
5. Notice that an applicant may receive a clarification from the district of its interpretation or application of a statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement as provided in section 48-3649.

48-3647. [Directory of documents](#)

The district shall publish, or prominently place on the district website, at least annually, a directory summarizing the subject matter of all currently applicable ordinances, rules, regulations and substantive policy statements. The district shall keep copies of this directory and all substantive policy statements at one location. The directory, ordinances, regulations, rules, substantive policy statements and any materials incorporated by reference in these documents shall be open to public inspection at the office of the district or the district website.

48-3648. Complaints; procedures

- A. The board of directors shall establish a procedure to receive complaints from an adversely affected person concerning ordinances, rules, substantive policy statements or district practices alleged to violate this chapter.
- B. The board of directors may require the complaint to be made in writing and to include the following information:
 - 1. The name and address of the adversely affected person making the complaint.
 - 2. The ordinance, rule, regulation, substantive policy statement or district practice alleged to violate this article or section 48-3609.02.
 - 3. Any facts relevant to, and the legal basis for, the complaint.
- C. Procedures adopted by the board of directors pursuant to this section shall include reasonable time frames to address complaints and shall provide a process for appeal.

48-3649. Clarification of interpretation

- A. An applicant for a license subject to this article may request a district to clarify its interpretation or application of a statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement affecting the procurement of that license by providing the district with a written request that states:
 - 1. The name and address of the applicant requesting the clarification.
 - 2. The statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement or part of the statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement that requires clarification.
 - 3. Any facts relevant to the requested ruling.
 - 4. The applicant's proposed interpretation of the applicable statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement or part of the statute, ordinance, regulation, executive order, delegation agreement or authorized substantive policy statement.
 - 5. Whether, to the best knowledge of the applicant, the issues or related issues are being considered by the district in connection with an existing license or license application.
- B. On receipt of a request that complies with subsection A, the district may meet with the applicant to discuss the written request and shall respond within thirty days of the receipt of the written request with a written explanation of its interpretation or application as raised in the written request. The district shall provide the applicant with an opportunity to meet and discuss the district's written explanation.

C. A district may modify a written explanation provided under subsection B on written notice to the applicant if required by a change in the law that was applicable at the time the clarification of interpretation was issued, including changes caused by legislation, administrative rules formally adopted by the governing body or a court decision.

48-3650. Exemptions

This article does not apply to:

1. An ordinance, regulation or substantive policy statement that relates to only the internal management of a district and that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
2. An ordinance, regulation or substantive policy statement that relates to only the physical servicing, maintenance or care of district owned or operated facilities or property.
3. An ordinance, regulation or substantive policy statement relating to a district contract.

8-Org Charts



Flood Control District

www.maricopa.gov/floodcontrol
Front Desk: 602-506-1501
Customer Service: 602-506-2419
Ombudsman: 602-525-4276

Michael A. Fulton
Director

Ed Raleigh
Senior Engineering Advisor
Engineering Manager

Angie Flick
Chief Administrator
Administrator

Kristine Rabe
Assistant to Director's Office
Management Assistant

Charles Klenner
Operations & Maintenance Division Mgr
Operations/Program Manager

Catherine Regerster
Floodplain Permitting Division Manager
Engineering Supervisor

Kelli Serlich
Policy, Planning and Coordination
Branch Manager
Planning Supervisor

Karen Scott
Finance & Contracts Division Manager
Finance Manager

Erik Amtz
Inspection Supervisor
Inspection Supervisor

Atshin Ahouraiyan
Hydrology/Hydraulics Branch Manager
Engineering Supervisor

Deborah Wilson
Support Services Branch Manager
Administrative Supervisor

Gregory Browne
Operations & Maintenance Branch Mgr

Lynn Thomas
Floodplain Use Permitting Branch Mgr.
Engineering Supervisor

Lisa Blyler
Information, Outreach and Support
Division Manager

Andy Garcia
O & M Supervisor

Michael Smith
Customer Assistance and Compliance
Branch Manager
Inspection Supervisor

Kathryn Gross
Floodplain Delineation Branch Manager

Scott Vogel
Chief Engineer & General Manager/
Engineering Division Manager
Engineering Manager

Joe Wagner
Mapping/Survey & CAD Branch Manager
Engineering Support Branch Manager

Stephanie Gerlach
Special Projects Branch Manager
Engineering Supervisor

Stephen Waters
Flood Warning Branch Manager
Engineering Support Branch Manager

Bing Zhao
Eng App/River Mechanics Branch Mgr
Engineering Supervisor

Patrick Schafer
Civil/Structures Branch Manager
Engineering Supervisor

Donald Rerick
Planning & Project Mgmt Division Mgr
Engineering Manager

Tim Murphy
Project Management Branch Manager
Engineering Supervisor

Thomas Renckly
Dam Safety Branch Manager
Engineering Supervisor

John Rodriguez
Construction Management Branch Mgr
Engineering Supervisor

Hasan Mushtaq
Planning Branch Manager
Planning Supervisor

Harry Cooper Jr
LA & WC Branch Manager
Landscape Architect

Michele Fite
HR Analyst

Michelle Colby
Director of Real Estate
Real Estate Chief Officer

Bill Leal
Ombudsman
Ombudsman

Kevin LaVallee
GIS Supervisor
Applications Development Supv

Dave Jones (SMA)
IT Division Manager
IT Division Manager

Lucinda Van Schoyck
Property Engineering Manager
Real Property Supervisor

Kimberly Romero
Real Property Manager
Real Property Manager

Dave Jones
Applications Development Manager
Applications Development Manager

Dan Johnson
Network Solutions Manager
Technical Support Manager

Lesley Roman
Business Solutions Manager
IT PMO Manager

MARICOPA COUNTY ORGANIZATIONAL CHART

ELECTED

APPOINTED



COURTS & LAW ENFORCEMENT

SUPERIOR COURT
Presiding Judge, Joseph Welty

Justices of the Peace, Superior Court Judges & Commissioners
Adult Probation, Juvenile Probation & Detention, Court Administration, Municipal Court Judges



OPERATIONS OVERSIGHT

BOARD OF SUPERVISORS

District 1
Jack Sellers

District 2
Steve Chucri

District 3
Chairman Bill Gates

District 4
Vice Chairman Clint Hickman

District 5
Steve Gallardo



ADMINISTRATION

COUNTY MANAGER
Joy Rich

Internal Audit,
Michael McGee

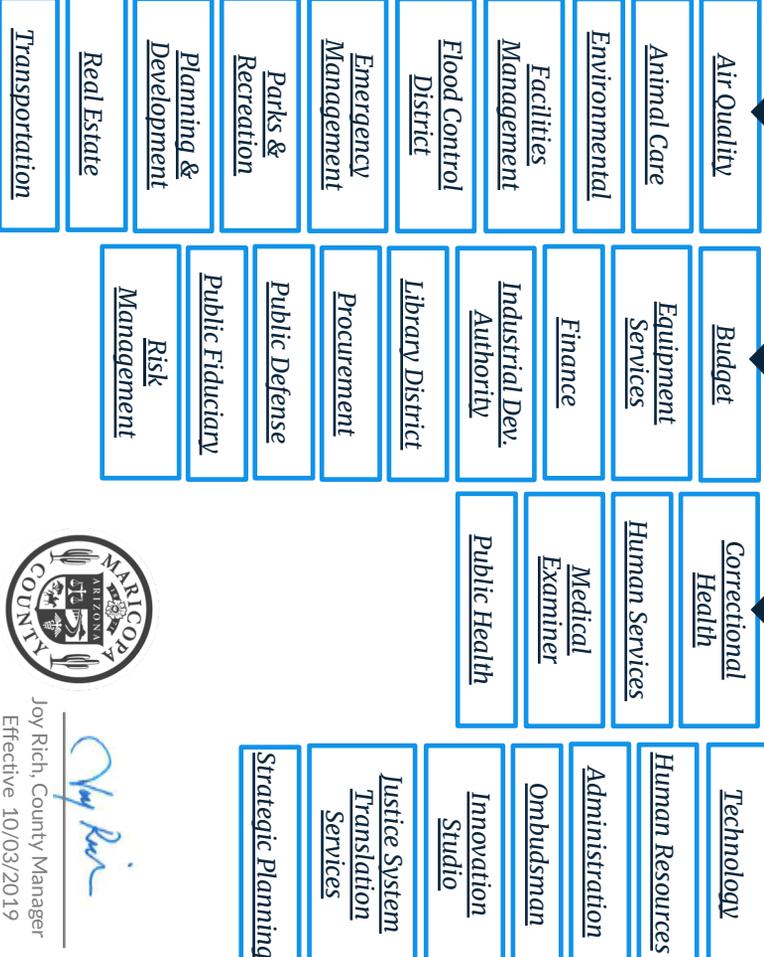
Clerk of the Board,
Fran McCarroll

Election Day Director,
Scott Jarrett

Deputy County Manager,
Reid Spaulding

Asst. County Manager,
Shelby Scharbach

Asst. County Manager,
Lee Ann Bohn



FISCAL, PROPERTY & PARCEL

Treasurer,
Royce Flora

Assessor,
Paul Petersen



RECORDED DOCUMENTS & ELECTIONS

Recorder,
Adrian Fontes



EDUCATION

County School Superintendent,
Steve Watson



Joy Rich, County Manager
Effective 10/03/2019

1-FRB

Floodplain Review Board (FRB)

MISSION:

The Floodplain Review Board sits in review to make decisions to interpret regulations, if there is a dispute between an appellant and district employees or if location of a floodway or floodplain is in doubt. The Board may make decisions to allow variances to the extent permitted by State law and by the Floodplain Regulations.

LIAISON:

Michael A. Fulton, Director

MEMBERS:

District 1: Richard Schaner

District 2: Gregg Monger

District 3: Hemant Patel

District 4: Robert Justice

District 5: Vacant

City of Phoenix: Ray Dovalina

Salt River Project: Kyle Tilghman

MEMBER QUALIFICATIONS:

Floodplain Regulations Section 203(D):

"Floodplain Review Board (Board of Review) – Established by the Board of Supervisors pursuant to the authority granted in A.R.S. §48-3612. The Flood Control Advisory Board is appointed by the Board of Directors as the Floodplain Review Board to sit in review and make decisions in accordance with A.R.S. §48-3612. The members of the Floodplain Review Board shall serve without compensation except that their reasonable and necessary expenses incurred on Board business may be reimbursed."

MEETINGS:

Meetings are scheduled when an appeal is filed. Generally the meetings will be scheduled on the same day as a Flood Control Advisory Board Meeting, to immediately precede or follow the FCAB meeting.

Floodplain Review Board meeting notices are posted within the first-floor public lobby of the Flood Control District administrative building at 2801 W. Durango Street in Phoenix. Such notices will indicate the date,

time and place of the meeting(s), and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting(s).

POWERS AND DUTIES:

A.R.S. § 48-3612:

"Board of review

- A. The board of directors may establish a board of review, which may be the advisory board or a committee of the advisory board to sit in review and make decisions as follows:
 - 1. Interpret regulations adopted pursuant to this article if the meaning of a word, phrase or section is in doubt, if there is dispute between the appellant and district employees or if location of a floodway or floodplain is in doubt.
 - 2. Allow variances from the terms or regulations adopted pursuant to this article to the extent permitted by section 48-3609, subsection B, paragraph 7 if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship and if in granting the variance the general intent and purposes of this article and the regulations will be preserved.
- B. Appeals to the review board may be taken by any person who feels that there is error or doubt in the interpretation of the regulation or that due to unusual circumstances attaching to his property an unnecessary hardship is being inflicted on him. The appeal shall state whether it is a plea for an interpretation or a variance and the grounds for the appeal.
- C. A person aggrieved in any manner by an action of the review board may within thirty days appeal to the district board. "

Floodplain Regulations Section 203(D):

"Duties:

- A. The Floodplain Review Board shall elect a chairperson and a vice chairperson from among its own members who shall have power to administer oaths and to take evidence.
- B. The Floodplain Review Board shall by resolution fix the time and place of its meetings. The meetings shall be open to the public. Minutes of its proceedings and records of its interpretations, appeals, Variances, and other official actions shall be kept and filed in the office of the Flood Control District as a public record.
- C. The Floodplain Review Board may prescribe, in connection with the grant of any Variance or appealed use permit, conditions determined necessary to carry out the provisions of these Regulations, state statutes, and any relevant federal codes, regulations, and any court interpretations thereof.

If the Floodplain Review Board has cause to believe, after approval of a Variance, that any stipulations or conditions may have been violated, it may set a hearing for the purpose of determining possible revocation of the Variance for such violation. The Floodplain Review Board may revoke the Variance for finding a violation of the stipulations or conditions, or it may grant a limited time within which to correct the violation in order to avoid revocation of the Variance.”

Floodplain Regulations Section 409:

“Appeals:

- A. Appeals may be taken to the Floodplain Review Board pursuant to A.R.S. §48-3612(B) and A.R.S. §48-3642. Any person, if there is a dispute between the person and district employees or if location of a floodway or floodplain is in doubt, may file an appeal seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt. After substantively complying with A.R.S. §48-3649, an applicant for a license may file an appeal seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt; or an applicant may file an appeal challenging a denial of a permit. A regulated person, if there is a dispute between the regulated person and district employees of a final decision of a district based on the results of an inspection, may file an appeal to the Floodplain Review Board seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt.
- B. Appeals to the Floodplain Review Board shall be filed with the Floodplain Administrator within thirty (30) calendar days of the receipt of notice of the decision to be appealed, or sixty (60) calendar days from the date of the decision whichever is earlier. The notice of appeal shall be in writing on a form provided by the Floodplain Administrator and shall state the name and address of the person requesting the interpretation, the regulation that requires clarification, any facts relevant to the requested interpretation and the person’s proposed interpretation of the applicable regulation.
- C. Any interpretation of the regulations issued by the Floodplain Review Board shall only affect the dispute between the appellant and district employees. If the district wants to expand the application of the Floodplain Review Board’s interpretation of the regulations, the district shall follow the procedures required by Maricopa County’s Enhanced Regulatory Outreach Program Policy.
- D. The Floodplain Review Board shall fix a time for hearing the appeal and give notice to the parties in interest and to the public as set forth herein. The Floodplain Review Board shall hear and decide the appeal within a reasonable time.
- E. Property shall be posted pursuant to procedures adopted by the Floodplain Review Board.
- F. Any appellant aggrieved by a decision of the Floodplain Review Board may, within thirty (30) days of such decision, appeal to the Board of Directors by filing a written notice of appeal with the Clerk of the Board on a form provided by the Floodplain Administrator. Said notice shall state the name

and address of the person requesting the interpretation, the regulation that requires clarification, any facts relevant to the requested interpretation and the person's proposed interpretation of the applicable regulation.

- G. Any appellant aggrieved by a decision of the Board of Directors may file a special action in Superior Court of the State of Arizona."

Floodplain Regulations Section 410:

"Floodplain Variance

A. Generally, Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided the procedures of Articles One and Six of these Regulations have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing variances increases.

1. Variances may be issued for the repair, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures' continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
2. Variances shall only be issued upon showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 205 of this ordinance in the definition of "Functionally Dependent Use."

B. Conditions for the issuance of a Variance:

1. A Variance for relief from these Regulations may be issued by the Floodplain Administrator, Floodplain Review Board, or affirmed by the Board of Directors when development does not result in danger or damage to persons or property in floodplains and all of the following criteria are met:
 - a. That no increase in the Base Flood Elevation would result and that no increase in flood levels within any designated floodway during the base flood discharge would result;
 - b. That special circumstances, such as size, shape, topography, location or surroundings of the property, would cause the strict application of the Regulations to deprive the property of privileges enjoyed by similar property in the jurisdictional floodplain;
 - c. That the Variance does not constitute a grant of special privileges inconsistent with the limitations on similar property in the jurisdictional floodplain;
 - d. That the Variance requested is the minimum necessary, considering the flood hazard, to afford relief;

- e. That there is a showing of good and sufficient cause;
 - f. That a determination that failure to grant the Variance would result in exceptional hardship to the applicant;
 - g. That granting the Variance will not result in additional threats to public safety, extraordinary public expense, create a nuisance, the victimization of or fraud on the public; and
 - h. That the Variance does not conflict with existing local laws or ordinances.
2. In addition to the above requirements, the Floodplain Administrator, Board of Directors or the Floodplain Review Board, may attach such conditions or restrictions to the granting of a Variance as it determines necessary to eliminate potential threats to public safety or to public or private property resulting from the granting of the Variance.
3. The burden of proof of compliance with the above conditions shall be on the applicant.”

Floodplain Regulations Section 411:

“Recordation and Notification

A. Recordation/Notification of Variance

Upon the granting of a Variance for the construction of a dwelling unit or commercial or industrial structure, where the construction of such unit or structure is otherwise contrary to these Regulations, the Board shall notify the grantee in writing that:

1. The issuance of the Variance may result in increased premium rates for flood insurance. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. [44 CFR 60.6(a)]
2. Construction below the Regulatory Flood Elevation will increase risks to life and property and flooding may occur by channel meander or by a more frequent flood or a larger flood than the 100-year flood event;
3. The structure or the land upon which the structure is located is ineligible for exchange of land pursuant to any flood relocation and land exchange program.
4. The original of the above written notice shall be recorded with the Maricopa County Recorder in a manner so that it appears in the chain of title of the affected parcel of land. Proof of such recordation shall be maintained on file with the Floodplain Administrator and be available to any agency requiring any subsequent permits.
5. The Floodplain Administrator shall maintain a record of all Variance actions. This record shall be included in the biennial report to the Federal Emergency Management Agency.

B. Recordation of Flood Hazard Determination

Upon approval of a Floodplain Use Permit, or when through the course of performing other authorized duties it is determined that any portion of a parcel of land is within a delineated flood hazard zone, or a previously noticed parcel has been removed from the delineated flood hazard zone, a notice of such determination may be recorded with the office of the Maricopa County Recorder in a manner so that it appears in the chain of title of the affected parcel of land. The Floodplain Administrator may also record the Floodplain Use Permit.

C. Recordation of Floodplain Violations

The Floodplain Administrator may cause to have recorded any notice of violation or non-compliance issued pursuant to Section 702.”

FORMATION AUTHORITY:

A.R.S. § 48-3612:

“Board of review

- A. The board of directors may establish a board of review, which may be the advisory board or a committee of the advisory board to sit in review and make decisions as follows:
 - 1. Interpret regulations adopted pursuant to this article if the meaning of a word, phrase or section is in doubt, if there is dispute between the appellant and district employees or if location of a floodway or floodplain is in doubt.
 - 2. Allow variances from the terms or regulations adopted pursuant to this article to the extent permitted by section 48-3609, subsection B, paragraph 7 if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship and if in granting the variance the general intent and purposes of this article and the regulations will be preserved.”

**2-Appeal
Application**



Flood Control District of Maricopa County

Received Date _____

For District use only

FLOODPLAIN APPEAL APPLICATION

Administrative Floodplain Review Board Board of Directors

Owner Information

Name: _____
Mailing Address: _____ City: _____ State: _____ ZIP: _____
Phone Number: _____ Business Phone Number (if applicable): _____
E-Mail: _____

Property Information

Address: _____ City: _____ State: _____ ZIP: _____
Assessor Parcel Number: _____ Section: _____ Township: _____ Range: _____ 1/4 Section: _____

Applicant/Agent Information

Name: _____
Mailing Address: _____ City: _____ State: _____ ZIP: _____
Phone Number: _____ Business Phone Number (if applicable): _____
E-Mail: _____

Purpose of the appeal: (attach grounds for appeal as separate document): _____

APPLICANT SIGNATURE _____ DATE _____

For Flood Control District use only

Tracking Number: _____ Supervisory District: _____ Fee: _____
Floodplain: _____ FIRM Panel: _____ Zone: _____
Map Date: _____ BFE: _____ RFE: _____
Additional Documentation: Documentation as required by Floodplain Regulations for Maricopa County
 Property Posted Coordination _____
(Agency)

For Floodplain Administrator use only

Administrative Appeal Grant Deny _____
Floodplain Administrator _____ Date _____

Conditions or restrictions (if checked see attached)

For Floodplain Review Board use only

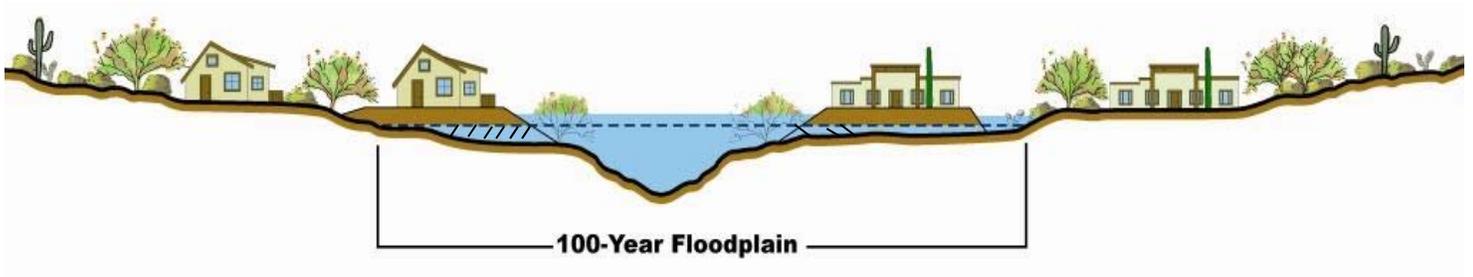
ACTION TAKEN: Grant _____ Deny _____ Continuance _____
Date Date Date

BOARD ACTION CONFIRMED: _____ **DATE** _____

FCDMC Rev. 7/19/2011



Floodplain Regulations for Maricopa County



Published by:
Flood Control District of Maricopa County
2801 West Durango Street, Phoenix, Arizona 85009
602-506-2419

FCDMC Adopted January 17, 2018

(This page intentionally left blank)



Floodplain Regulations

for Maricopa County

Published by:
Flood Control District of Maricopa County
2801 West Durango Street, Phoenix, Arizona 85009, 602-506-1501

(This page intentionally left blank)

Table of Contents

ARTICLE ONE. General Provisions

Section 101. Findings of Fact.....	1
Section 102. Statutory Authority	1
Section 103. Statement of Purpose	2
Section 104. Title	3
Section 105. Applicability	3
Section 106. Rules.....	3
Section 107. Construction and Interpretation	3
Section 108. Warning and Disclaimer of Liability.....	4
Section 109. Severability	4
Section 110. Effective Date.....	4

ARTICLE TWO. Administration

Section 201. Floodplain Administrator	5
Section 202. Duties of Communities Dependent on the District	7
Section 203. Applicable Boards, Agencies, and Hearing Officer	7
Section 204. Coordination.....	9
Section 205. Definitions.....	9
Section 206. Definitions Pertinent to Inspection and Enforcement	20

ARTICLE THREE. Flood Hazard Boundaries

Section 301. Area of Jurisdiction.....	21
Section 302. Flood Hazards Not Delineated.....	21
Section 303. Basis for Establishing Special Flood Hazard Areas	22
Section 304. Other Flood Hazard Boundaries	22
Section 305. Watercourse Master Plan	22
Section 306. Publication of Flood Hazard Boundaries	23
Section 307. Public Notice	23
Section 308. Determination in Case of Dispute.....	23

ARTICLE FOUR. Floodplain Use Permit, Appeals, and Variances

Section 401. Floodplain Use Permit Required25

Section 402. Permit Fees.....26

Section 403. Application Requirements26

Section 404. Permit Conditions28

Section 405. Elevation and Floodproofing Certificates30

Section 406. Allowed Uses31

Section 407. Exceptions: Review of Plans32

Section 408. Personal Liability32

Section 409. Appeals – Applicant Requirements32

Section 410. Floodplain Variance – Applicant Requirements.....33

Section 411. Floodplain Review Board Duties..... 34

Section 412. Recordation and Notification.....36

ARTICLE FIVE. Allowable Development

Section 501. Zone AE Floodway39

Section 502. Zone AE.....40

Section 503. Zone A Non-Alluvial, Zone A Ponding, and Zone A Shallow Flooding40

Section 504. Zone AH Ponding41

Section 505. Zone AO Ponding Area, Zone AO Shallow Flooding, Zone AO Alluvial Fan.....41

Section 506. Zone A Alluvial Fan Administrative Floodway.....41

Section 507. Zone A Alluvial Fan42

Section 508. Other Flood Hazard Zones.....42

ARTICLE SIX. Provisions for Flood Hazard Reduction

Section 601. General Development Standards43

Section 602. AE Floodway48

Section 603. Zone AE.....49

Section 604. Zone A (non-alluvial)50

Section 605. Zone A Ponding.....50

Section 606. Zone A Shallow Flooding.....51

Section 607. Zone AH Ponding51

Section 608. Zone AO Ponding Area.....	51
Section 609. Zone AO Shallow Flooding.....	52
Section 610. Zone AO Alluvial Fan.....	52
Section 611. Zone A Alluvial Fan High Hazard Area Administrative Floodway	52
Section 612. Zone A Alluvial Fan Uncertain Flow Distribution Area Administrative Floodway	52
Section 613. Zone A Approximate Alluvial Fan Floodway Administrative Floodway	53
Section 614. Zone A Alluvial Fan	53
Section 615. Development Standards within Other Flood Hazard Areas	54

ARTICLE SEVEN. Enforcement

Section 701. Authority	55
Section 702. Violation	55
Section 703. Enforcement	55
Section 704. Service of Notice of Violation.....	56
Section 705. Response to the Notice of Violation.....	57
Section 706. Hearing Request	57
Section 707. Hearing Procedures	58
Section 708. Penalties	60
Section 709. Abatement.....	60

REVISIONS 61

APPENDICES 63

APPENDIX A – Fee Schedule A1

APPENDIX B – Communities Dependent on the District B1

APPENDIX C – Licensing Time Frames C1

(This page intentionally left blank)

ARTICLE ONE

GENERAL PROVISIONS

Section 101. Findings of Fact

It is the finding of the Board of Directors of the Flood Control District of Maricopa County that:

- A.** The flood hazard areas of Maricopa County are subject to periodic inundation that may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B.** These flood losses are caused in part by the cumulative effect of obstructions in Special Flood Hazard Areas that increase flood heights and velocities, and when inadequately anchored, cause damage. Uses that are inadequately floodproofed, not elevated or otherwise protected from flood damage also contribute to the flood loss.
- C.** Development within areas designated as Special Flood Hazard Areas, areas designated by the Floodplain Administrator shown on the Flood Management Maps for Maricopa County, or areas not yet delineated with contributing watersheds that have flows greater than 50 cubic feet per second (cfs) during a 100-year flood event, require permitting through judicious floodplain management pursuant to the authority granted in A.R.S. §48-3609(B).

Section 102. Statutory Authority

Arizona Revised Statutes Sections 48-3601 through 48-3650 direct each county Flood Control District Board of Directors to adopt and enforce floodplain regulations consistent with criteria adopted by the Director of Arizona Department of Water Resources. The floodplain regulations adopted by a district are intended to carry out the requirements of the National Flood Insurance Program and any term not otherwise defined in this chapter shall have the meaning set forth in 44 Code of Federal Regulations parts 59 through 78.

A Floodplain Regulation for Maricopa County has been in force since February 25, 1974. Therefore, the Board of Directors of the Flood Control District of Maricopa County, Arizona adopts these Regulations, amending the November 30, 2011 adopted version and subsequent text amendments, continuing the statutory authority vested in the District to regulate development through its Floodplain Administrator.

Additional dates pertaining to participation in the National Flood Insurance Program: Emergency entry date December 31, 1970; Regulation entry date July 2, 1979; Initial FIRM July 2, 1979.

In accordance with A.R.S. Sections 48-3642 and 48-3644 the District shall publish, or prominently place on the website the ordinances, regulations and substantive policy statements, including a directory of documents, at the office of the District or District website as provided in A.R.S. §48-3647, and documentation of authorization by statute, rule, regulation, ordinance, executive order or delegation agreement.

Section 103. Statement of Purpose

It is the purpose of these Regulations to comply with the directive of A.R.S. §48-3609 and 44 CFR Ch.1. et seq. (pertaining to the National Flood Insurance Program) to promote and protect the health, peace, safety, comfort, convenience, and general welfare of the residents within the jurisdictional area of Maricopa County, Arizona; to minimize public and private losses due to flood conditions in specific areas; and to enable Maricopa County and its residents to participate in the National Flood Insurance Program (NFIP), receive Federal Disaster Assistance, obtain flood insurance and reduce the cost of flood insurance.

A. It is the intent of the Flood Control District Board of Directors to:

1. Protect the life, health, and property of county residents;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, fiber optics and sewer lines, streets and bridges located in Special Flood Hazard Areas;
6. Help maintain a stable tax base by regulating development of Special Flood Hazard Areas so as to minimize future flood blight areas;
7. Take all reasonable action so that potential buyers have notice that property is in a Special Flood Hazard Area;
8. Take reasonable action so that those who occupy the Special Flood Hazard Areas assume responsibility for their actions;
9. Minimize flood damages and reduce the height and violence of floods that are caused by obstructions restricting the capacity of floodways;
10. Prevent unwise encroachment, building and development within Special Flood Hazard Areas;
11. Reduce the financial burden imposed on the community, its governmental units and its residents when such land is flooded;
12. Protect the natural and beneficial function of the floodplains; and
13. Maintain eligibility for disaster relief.

B. Methods of reducing flood losses:

In order to accomplish its purposes, these Regulations include methods and provisions to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

4. Control filling, grading, dredging, and other development which has the potential to increase flood damage; and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which has the potential to increase flood hazards in other areas.

Section 104. Title

These Regulations, adopted by Resolution, shall be known and cited as the Floodplain Regulations for Maricopa County and are hereinafter referred to as “Regulations.”

Section 105. Applicability

These Regulations shall apply to all Special Flood Hazard Areas within the boundaries of Maricopa County except those incorporated cities and towns which have adopted a resolution in accordance with A.R.S. §48-3610. Land areas that are at high risk for flooding are called Special Flood Hazard Areas (SFHAs), or floodplains. These areas are indicated on Flood Insurance Rate Maps (FIRMs). Such areas include all lands located within delineated floodplains and watercourses; areas designated as Special Flood Hazard Areas; and areas with contributing watersheds that have flows greater than 50 cubic feet per second (cfs) during a 100-year flood event that are within the area of jurisdiction of the Flood Control District of Maricopa County.

Section 106. Rules

When not inconsistent with the context, words used in the present tense include the future tense, words in the singular include the plural; words in the plural include the singular. Words or phrases not specifically defined in these Regulations shall be interpreted so as to give them the meaning they have in common usage. The word “shall” is mandatory and the word “may” is permissive. No provision of these Regulations shall be construed to require written authorization for those exceptions set forth in A.R.S. §48-3613(B) nor shall the Board of Directors prohibit said exceptions; however, those exceptions must comply with A.R.S. §48-3613(C), which states, “Before any construction authorized by A.R.S. §48-3613(B) may begin, the person must submit plans for the construction to the Board for review and comment.”

Section 107. Construction and Interpretation

Nothing contained in these Regulations shall be construed to limit or repeal any powers granted to the Flood Control District of Maricopa County under state statute. These Regulations are not intended to repeal, abrogate, or impair any existing applicable requirements under federal, state, city, county, or other special district code, regulation, statute, or ordinance. These Regulations take precedence over any less restrictive conflicting local laws, ordinances or codes, as required by 44CFR 60.1.b.

Section 108. Warning and Disclaimer of Liability

The degree of flood protection required by these Regulations is considered reasonable for regulatory purposes under 44 C.F.R. Ch. 1, et seq. and is based on scientific and engineering considerations. Compliance with these Regulations does not insure complete protection from flooding and is not to be construed as a warranty. Larger floods can and will occur on rare occasions. Flood height may be increased by man-made or natural causes, such as bridge openings restricted by debris, natural erosion, streambed meander, or man-made obstructions and diversions.

These Regulations are not intended to imply that land outside Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damage. These Regulations shall not create liability on the part of the Flood Control District of Maricopa County, and any officer or employee thereof, Maricopa County and any officer or employee thereof, the State of Arizona, or the Federal Emergency Management Agency for any flood damages that may result from reliance on these Regulations or any administrative decision lawfully made hereunder.

Section 109. Severability

These Regulations and the various parts thereof are hereby declared to be severable. Should any section of these Regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of these Regulations as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

Section 110. Effective Date

These Regulations as amended are adopted by the Board of Directors of the Flood Control District of Maricopa County, Arizona, this 17 day of January 2018



Chairman, Board of Directors



Clerk of the Board

JAN 17 2018

Date

ARTICLE TWO

ADMINISTRATION

Section 201. Floodplain Administrator

A. Designation of the Floodplain Administrator

The Floodplain Administrator as designated by the Board of Directors shall be the Chief Engineer and General Manager of the District who shall administer and enforce these Regulations. The Floodplain Administrator may delegate signature authority for permitting purposes.

B. Duties and Responsibilities of the Floodplain Administrator

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Permit Review

Review all development permits to determine that:

- a. The permit requirements of these Regulations, applicable statutes, and federal codes have been satisfied;
- b. Applicants have assured that all other required state and federal permits have or will be received [44 C.F.R. 60.3(a)(2)];
- c. Structures are reasonably safe from flooding from the one percent (1%) chance flood event;
- d. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined, but a floodway has not been designated. For purposes of these Regulations, “adversely affect” means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point [44 C.F.R. Ch. 1, 60.3(c)(10)].

2. Substantial Improvement and Substantial Damage Procedures

- a. Develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining “Market Value.”
- b. Assure procedures are coordinated with other departments and divisions and implemented by assigned staff.

3. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with Section 303, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer Article Six – Provisions for Flood Hazard Reduction. Any such information shall be consistent with the requirements of the Federal Emergency Management Agency and the Director of the Arizona Department of Water Resources.

4. Obtain and Maintain for Public Inspection

- a. The certified regulatory flood elevation required in Section 601;
- b. The floodproofing certification required in Sections 405 and 601(G);
- c. The flood vent certification required in Section 601;
- d. The elevation certification required for additional development standards, including subdivisions, in Section 601;
- e. The floodway encroachment certification required in Section 405;
- f. Records of all Variance actions, including justification for their issuance, and report such Variances issued as required by the State or the Federal Emergency Management Agency;
- g. Improvement and damage calculations as required by Section 601.A.13 of these Regulations;
- h. Any other documents required by statutes which shall be open to public inspection at the office of the District or the District website.

5. Notification to Other Entities

- a. Whenever a watercourse is to be altered or relocated:
 - 1) Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, after assuring that the flood carrying capacity of the altered or relocated portion of said watercourse be maintained, and
 - 2) Submit evidence of such notification to the Federal Emergency Management Agency through appropriate notification means.
- b. Base flood elevation and rate of flow due to physical alterations:
 - 1) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.
 - 2) Within one hundred twenty (120) days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the Director of the Arizona Department of Water Resources.

c. Corporate Boundary Changes:

Notify the Federal Emergency Management Agency and the Arizona Department of Water Resources of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

6. Map Determinations

Make interpretations, where needed, as to the exact location of the boundaries of the Special Flood Hazard Areas (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article Four.

7. Remedial Actions

Take actions on violations of these Regulations as required in Article Seven.

Section 202. Duties of Communities Dependent on the District

Communities in Maricopa County that have elected not to assume floodplain management responsibility as authorized in A.R.S. §48-3610 shall appoint a Community Floodplain Administrator who will be responsible for 1) coordinating with the District Floodplain Administrator's designee in providing floodplain management responsibility, and 2) verifying that the Community's participation in the National Flood Insurance Program is maintained and remains in good standing through adoption and enforcement of these Regulations.

The Community's Floodplain Administrator shall also be responsible for the following:

1. Keeping and maintaining the most current Flood Insurance Studies and Flood Insurance Map(s) covering their community;
2. Keeping and maintaining at least three (3) copies of the most current Floodplain Regulations at the office of the city or town clerk;
3. Keeping and maintaining elevation certificates (or acceptable records of lowest floor elevations) for all structures within the floodplain. Such records shall be retrievable and maintained by the Community in perpetuity; and,
4. Repealing or modifying all existing local ordinances that conflict with these Regulations.

See Appendix B for the communities for which the Flood Control District performs Floodplain Management.

Section 203. Applicable Boards, Agencies, and Hearing Officer

A. Board of Directors (Board) – The Board of Directors of the Flood Control District of Maricopa County. The County Board of Supervisors shall serve as the Board of Directors. The Board shall exercise all powers and duties in carrying out its regulatory functions as authorized by A.R.S. §48-3603. The Board, by Resolution FCD 84-7, appoints the Chief Engineer and General Manager of the Flood Control District as the Floodplain Administrator.

The Board of Directors shall adopt rules of procedure consistent with the provisions of these Regulations and applicable statutes for the conduct of Floodplain Review Board business including establishment of a fee schedule to cover administrative costs incurred in the processing of Appeals, Floodplain Use Permits, Floodplain Variances, and plan reviews.

B. Flood Control District of Maricopa County (District) – The Flood Control District of Maricopa County was officially organized on August 3, 1959 pursuant to A.R.S. §48-3602 (current). The District performs floodplain management for unincorporated county and the communities as noted in Appendix B.

C. Flood Control Advisory Board – A Board of seven members appointed by the Board of Directors. Five members shall be resident taxpayers and qualified electors of the District, at least three of whom shall be residents of the cities in the District. At least one of the Board members who are residents of cities shall be a resident of the largest city in the District.

The city engineer of the largest city in the District and the chief engineer or manager of a major irrigation or agricultural improvement district, or their representatives, shall be ex officio members of the Advisory Board with all rights and privileges granted to other Board members.

D. Floodplain Review Board – The Floodplain Review Board shall serve as the Board of Review pursuant to A.R.S. §48-3612. The Flood Control Advisory Board is appointed by the Board of Directors as the Floodplain Review Board to sit in review and make decisions in accordance with A.R.S. §48-3612. The members of the Floodplain Review Board shall serve without compensation except that their reasonable and necessary expenses incurred on Board business may be reimbursed.

The Floodplain Review Board shall elect a chairperson and a vice chairperson from among its own members who shall have power to administer oaths and to take evidence.

The Floodplain Review Board shall by resolution fix the time and place of its meetings. The meetings shall be open to the public. Minutes of its proceedings and other official actions shall be kept and filed in the office of the Flood Control District as a public record.

E. Board of Hearing Review (see A.R.S. §48-3615.01(H)(I) and §48-3615.02) – The Board of Directors shall establish a Board of Hearing Review to review decisions of Hearing Officers that are issued pursuant to Section 48-3615.01. The Board of Hearing Review shall consist of one member from each Board of Directors' district or the Board of Directors may authorize the citizens' Flood Control Advisory Board or the Board of Review to designate a like number of its members to serve as the Board of Hearing Review.

F. Arizona Department of Water Resources (ADWR) – The State agency that coordinates with participating NFIP communities to ensure compliance with Federal and State floodplain management regulations. The Floodplain Management Program is housed at ADWR and is responsible for assisting communities that participate in the NFIP, administers the Community Assistance Program, the Risk MAP (Mapping Assessment and Planning), sets State Standards for floodplain management, and works with local, state and federal entities during times of flood emergencies.

- G.** Federal Emergency Management Agency (FEMA) – The federal agency within the Department of Homeland Security that is tasked with responding to, planning for, recovering from, and mitigating against man-made and natural disasters. FEMA oversees the administration of the National Flood Insurance Program and the designation of areas as flood prone. FEMA oversees the development and publishing of Flood Insurance Rate Maps and Flood Insurance Studies.
- H.** Hearing Officer – The Hearing Officer shall be appointed by the Board of Directors and may be an employee of the District. The individual appointed by the Board shall hear and decide all civil proceedings established in these Regulations. Decisions of the Hearing Officer or by the Board of Hearing Review shall be available to any party to the hearing.

Section 204. Coordination

The Board and the Floodplain Administrator shall coordinate the provisions of these Regulations with all other interested and affected political subdivisions, federal and state agencies, as required by A.R.S. §48-3609 and §48-3610.

Section 205. Definitions

In these Regulations, unless the context requires otherwise, the following words shall be used as set forth in this Section. Unless specifically defined below, words or phrases used in this Regulation shall be interpreted so as to give the meaning they have in common usage and to give this Regulation its most reasonable application.

Accessory Structure: A structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. Examples include: detached garage, storage shed, gazebos, open shade structures, picnic pavilions, boat houses, small pole barns, and similar buildings.

Accessory Use: A use that is incidental and subordinate to the principal use of the parcel of land on which it is located.

Active Alluvial Fan Flooding: A type of flood hazard that occurs only on alluvial fans, characterized by flow path uncertainty so great that this uncertainty cannot be set-aside in realistic assessments of flood risk or in the reliable mitigation of the hazard. An active alluvial fan flooding hazard is indicated by three related criteria: A) Flow path uncertainty below the hydrographic apex; B) Abrupt deposition and ensuing erosion of sediment as a stream or debris flow loses its competence to carry material eroded from a steeper, upstream source area; and C) An environment where the combination of sediment availability, slope, and topography creates a hazardous condition for which elevation on fill will not reliably mitigate the risk.

Administrative Floodway: The Special Flood Hazard Area designated on either the Flood Insurance Rate Maps (FIRM) or flood management maps as areas that are subject to local regulation requirements. These areas may include Active Alluvial Fan Flooding, Alluvial Fan High Hazard Area Flooding, Inactive Alluvial Fan Flooding, and conveyance corridors. These areas are designated as

the corridors that must be reserved to maintain the continuity of flow and sediment for the one percent (1%) annual flood event without causing cumulative adverse impact to adjacent properties.

Adverse Impact: Flood hazards resulting from development which diverts, retards, or obstructs the flow of water in any watercourse, threatens public health, safety, or the general welfare pursuant to A.R.S. §48-3609(B)1; fails to protect the site from flood related erosion; and aggravate the existing flood related erosion hazards (CFR Title 44 Part 60 Subpart A Section 60.5); and include the following:

- Any development that may create a loss of life, limb and well-being to any person,
- Any development that may cause a structure to fail, and/or not be able to be used for its intended use including loss of access for maintenance and/or repair,
- Any development that may cause erosion or aggravate existing flood-related erosion on adjacent or nearby property, or
- Until a regulatory floodway is designated, any cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one (1) foot at any point as stated in 44 C.F.R. Ch. 1, 60.3 (c)(10); or
- Any development that may cause a rise in the Base Flood Elevation by more than one (1) foot.

Aggradation: The deposition of sediment in a watercourse or floodplain.

Alluvial Fan: A sedimentary deposit located at a topographic break such as the base of a mountain front, escarpment, or valley side, that is composed of streamflow and/or debris flow sediments and has the shape of a fan, either fully or partially extended.

Alluvial Fan Flooding: Flooding occurring on the surface of an alluvial fan that originates at the apex and is characterized by high velocity flows, active processes of erosion, sediment transport and deposition, and unpredictable flow paths.

Alluvial Fan High Hazard Area (AFHH): An area of alluvial fan flooding that is reserved to convey and receive sediment and floodwater without altering and thereby increasing the distribution of hazard across the fan to inactive areas and to areas downslope.

Alluvial Fan Uncertain Flow Distribution Area (AFUFD): A transitional area for sheet flooding and channelized flow located below the AFHH area generally becoming more stable and less uncertain with distance from the AFHH area.

Alluvial Fan Zone A (AFZA): An area of alluvial fan flooding characterized by flooding along stable flow paths and sheet flow or sheet flooding. These stable flow paths may still be subject to erosion hazards, channel bed and bank scour, and deposition.

Approximate Alluvial Fan Floodways (AAFF): Major conveyance corridors defined within AFUFD and AFZA areas for unimpeded through flow of floodwater and sediment.

Anticipated Development: Development which might occur consistent with permits, plans, ordinances, zoning, resolutions, or other actions taken by government entities.

Approximate Study: A graphic illustration of a delineation of the floodplain by the Floodplain Administrator made from the most reliable sources available where neither a floodplain nor a floodway has been determined by detailed methodology.

Apex: A point on an alluvial fan below which the flow of the major stream that formed the fan becomes unpredictable and alluvial fan flooding may occur.

Appeal: A request for a review of the Floodplain Administrator's interpretation of any provision of these Regulations; including denial of a permit, results of an inspection, or final decision and order of the Chief Engineer; or any determination made under these Regulations.

Area Drainage Master Study (ADMS): A study to develop hydrology for a watershed, to define watercourses, to identify potential flood problem areas, drainage problems and recommend solutions and standards for sound floodplain and stormwater management. The ADMS will identify alternative solutions to a given flooding or drainage problem.

Area Drainage Master Plan (ADMP): A plan that identifies the preferred alternatives of those identified in an ADMS. An ADMP provides minimum criteria and standards for flood control and drainage relating to land use and development.

Area of Shallow Flooding: An area with flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, the path of flooding is indeterminate, and where ponding may be evident.

Backfill: The placement of fill material within a specified depression, hole or excavation pit below the surrounding adjacent ground level, as a means of improving flood water conveyance.

Basement: The lowest level or story of any area of a building that has its floor sub grade (below ground level) on all sides.

Base Flood or One-Hundred-Year Flood: A flood that has a one percent (1%) chance of being equaled or exceeded in any given one-year period based on the criteria established by ADWR.

Base Flood Elevation (BFE): The water surface elevation produced by a base flood or 100-year flood.

Breakaway Fencing: A sacrificial (break-away) structure designed to fail at strategic locations to allow floodwaters to pass, relieving pressure on adjacent fence sections and which has been designed so that sacrificial sections that fail do not become loose in floodwaters and create additional debris and cause collateral damage.

Breakaway Wall: A wall that is not part of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building: A structure affixed to the land having a roof supported by columns or walls built for housing, shelter or enclosure of persons, animals, or property of any kind.

Clearing/Grubbing: Removal of vegetation without disturbance of existing land surface contours.

Conveyance Corridor: A land area adjoining a body of water or adjacent to or located partially or wholly within a floodplain which due to the soil instability, is likely to suffer flood related erosion damage. Conveyance corridors are areas that may not be defined by traditional encroachment methods due to directional changes when trying to achieve the increase in base flood of one (1) foot or less.

Community: Any state, area or political subdivision thereof, or any Native American tribe or authorized tribal organization who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

Compensation of Flood Volume Displacement: The replacement of the quantity of stormwater volume below the Base Flood Elevation that would be lost due to import of fill or by development by the proposed project.

Cumulative Substantial Damage: The total of all repairs to a repetitive loss structure shall not cumulatively increase the market value of the structure more than fifty percent (50%) of the market value during the life of the structure. This term does not, however, include either:

Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

Any repair of flood damage to “historic structure,” provided the repair will not preclude the structure’s continued designation as a “historic structure.”

Cumulative Substantial Improvement: Improvements, modifications, or additions to existing buildings are counted cumulatively for at least five (5) years and reconstruction and repairs to damaged buildings are counted cumulatively for at least five (5) years. When the improvements, modifications, additions, reconstruction, or repairs reach the fifty percent (50%) substantial improvement threshold, the structure must be brought into compliance.

Crawl Space: A type of basement in which one cannot stand up; the height may be as little as a foot and the surface is often soil; it is a convenient access to pipes, substructures and a variety of other areas. A crawlspace cannot be used as living space; it may be used as storage.

Degradation: The erosion of sediment in a watercourse or floodplain.

Delineated Floodplain: A graphic illustration of the area susceptible to inundation by a 100-year flood based upon the results of an authorized study that is included on either the Flood Management Maps for Maricopa County or the Flood Insurance Rate Maps, or both.

Delineated Floodplain, Pending: A delineated floodplain identified through a Flood Insurance Study, Area Drainage Master Study or Plan, or other study that has been accepted by the Floodplain Administrator as best available data to use for regulatory purposes, but is not yet shown on the Flood Insurance Rate Maps (FIRM); or when FEMA has issued a Best Available Data (BAD) Letter indication that the delineation will not be shown on the FIRMs, but is to be used for development purposes. Pending floodplain delineations are displayed on the Flood Management Maps.

Development: Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and storage of materials and equipment located within the Special Flood Hazard Area.

Dwelling: A residential building intended for human habitation.

Enclosure: That portion of a building that is below the residential lowest floor and is above ground.

Encroachment: The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

Erosion: The process of the gradual wearing away of landmass.

Erosion Hazard Zone: A land area located partially or wholly within a delineated floodplain which due to the soil instability, is likely to suffer flood related erosion damage.

Erosion Setback: The minimum horizontal distance between a structure and a channel bank necessary to protect the structure from flood related erosion damage.

Exempt Use: Any use within the delineated floodplain specifically exempted from these Regulations by applicable law.

Fill: The placement of fill material at a specified location to bring the ground surface up to a desired elevation.

Fill Material: Natural sand, dirt, soil and rock. For the purposes of floodplain management, fill material may include concrete, cement, soil cement, brick or similar material as approved by the Floodplain Administrator on a case-by-case basis.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from: A) the overflow of flood waters; B) the unusual and rapid accumulation or runoff of surface waters from any source; and/or C) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

Flood Hazard Zone: Any land area located partially or wholly within a delineated floodplain susceptible to flood related damage as designated on the Floodplain Management Maps. Such flood hazard zones may include but are not limited to areas highly susceptible to erosion, stream meander sensitivity, moveable bed, scour, wave action, and subsidence.

Flood Insurance Rate Map (FIRM): An official map on which the FEMA has delineated both the 100-year flood Special Flood Hazard Areas and the risk premium zones applicable to a community.

Flood Insurance Study (FIS): The official report provided by the FEMA. The report includes flood profiles, Base Flood Elevations, and FIRMs.

Flood Management Map: An official map, which may be either hard copy or in electronic format, for Maricopa County on which the Floodplain Administrator has delineated floodplains and other flood related flood hazard zones for the purpose of floodplain management.

Flood-Related Erosion: The collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by

a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Floodplain or Floodprone Area: Any land area susceptible to being inundated by water from any source. See “Flood or flooding.”

Floodplain Management: The operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Regulations: These Regulations and other codes, ordinances, and regulations adopted pursuant to the authority granted in A.R.S. §48-3603 through §48-3628 relating to the use of land and construction within a delineated floodplain and floodway, or other Special Flood Hazard Areas.

Floodplain Use Permit: A permit that must be obtained from the Floodplain Administrator prior to commencement or continuance of any development subject to these Regulations within the area of jurisdiction.

Floodproofing: Any combination of structural and non-structural additions, changes or adjustments to structures that reduce or eliminate flood damage to real estate or improved property, water and sanitary facilities, structures and their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas necessary in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than a designated height.

Floodway Fringe: The areas of a delineated floodplain adjacent to the floodway where encroachment may be permitted.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

Grading: Disturbance of existing land contours.

Hazardous Waste: Garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, or other discarded materials, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining, and agricultural operations or from community activities that because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating irreversible illness, or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed, or any waste identified as hazardous pursuant to A.R.S. §49-922.

Hazardous waste does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under 402 of the Federal Water Pollution Control Act (P.L. 92-500; 86 STAT. 816) as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (68 STAT. 919), as amended.

Highest Adjacent Finished Grade: The highest finished ground elevation after construction next to the walls of a structure.

Highest Adjacent Natural Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure (44 CFR 59.1): Any structure that is:
Listed individually in the National Register of Historic Places, a listing maintained by the Department of the Interior, or preliminarily determined by the Secretary of the Interior (Secretary) as meeting the requirements for individual listing on the National Register;

Certified or preliminarily determined by the Secretary as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

Individually listed on a state inventory of historic places with historic preservation places in states with historic preservation programs which have been approved by the Secretary; or

Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by: A) an approved state program as determined by the Secretary; or B) directly by the Secretary in states without approved programs.

Inactive Alluvial Fan: An alluvial fan where floodwater typically is within incised channels and adjacent stable land.

Landfill: See "Solid Waste Landfill."

Levee: A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

Levee System: A flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of these Regulations.

Manufactured Home Park or Subdivision: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Market Value: Market Value is determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation that has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot

cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the physical deterioration of the structure and functional obsolescence as approved by the Floodplain Administrator, but shall not include economic or other forms of external obsolescence.

Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

Mean Sea Level: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum of 1988 (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Maps are referenced.

Mobile/Manufactured Home: A structure transportable in one or more sections that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "Mobile/Manufactured Home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For flood insurance purposes, the term "Mobile/Manufactured Home" does not include park trailers, travel trailers, and other similar vehicles.

Natural and Beneficial Functions of Floodplains: Includes, but is not limited to the following: natural flood and sediment storage and conveyance, water quality maintenance, groundwater recharge, biological productivity, fish and wildlife habitat, harvest of natural and agricultural products, recreation opportunities, and areas for scientific study and outdoor education.

New Construction: For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Nonconforming Use: The use of any land, building or permanent structure lawfully existing either on the effective date of the adopted floodplain delineation in which the land, building or permanent structure is located, or August 3, 1984, the effective date of A.R.S. §48-3601 et. seq., whichever is the earlier date.

Obstruction: Anything in, along, across or projecting into any watercourse that may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream, including but not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material.

One-Hundred Year Flood: The flood having a one percent (1%) chance of being equaled or exceeded in any given year. (See Base Flood definition)

Open Fencing: A structure that will withstand the effects of water pressure in all directions and allow equalization preventing collapse and failure. Examples of open fencing include farm fencing or wire strand.

Person: An individual or his agent, firm, partnership, association, corporation, municipality, or agent of the aforementioned groups, or this State or its agencies or political subdivisions.

Piedmont Assessment Manual: The document developed by the District to aid in the identification and delineation of active and inactive alluvial fan flood hazard areas.

Policies and Standards: The document developed by the District (Drainage Policies and Standards for Maricopa County) to provide technical guidance for application of the Floodplain Regulations and Drainage Regulations for Maricopa County.

Recreation Vehicle: Any vehicle or portable unit designed for living, sleeping, housekeeping or office purposes that is: A) 400 square feet or less when measured at the largest horizontal projection; B) built on a single chassis; C) designed to be self-propelled or permanently towable by a light duty truck; and D) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. This definition includes motorized and non-motorized vehicles, travel trailers, camping trailers, but does not include mobile/manufactured homes or buildings as defined by these Regulations.

Regulatory Flood Elevation (RFE): The elevation which is determined by the criteria established in the applicable section of Article Six of these Regulations and is typically a measured amount above the Base Flood Elevation, floodway or flood depth.

Sand and Gravel Mining: Any development that involves the extraction of sand and gravel or other materials from a floodplain.

Shallow Flooding: Area of flooding with average depths of one (1) to three (3) feet.

Solid Waste: Any garbage, trash, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material but not including domestic sewage or hazardous waste.

Solid Waste Landfill: Either a public or private facility at which solid waste is placed on or in land for the purpose of long-range storage or disposal. Solid waste landfill does not include a land application unit, surface impoundment, injection well, compost pile or agricultural on-site disposal areas covered under A.R.S. §49-766.

Special Flood Hazard Area: Land in a floodplain subject to a one-percent (1%) or greater chance of flooding in any given year. These areas are designated as Zones A, AO, AE, AH, AR, A99, or Alluvial Fan Zones on the FIRM or Floodplain Management Maps and other areas determined by the criteria adopted by the Director of the Arizona Department of Water Resources (44 C.F.R. Ch. 1, 59.1 – Definitions).

Start of Construction: Includes substantial improvement and other proposed new development, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns,

or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units, or not part of the main structure.

For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Standards: Documents defining standards for floodplain management as adopted by the Director of the Arizona Department of Water Resources pursuant to A.R.S. §48-3605(A).

Structure: Anything affixed to the ground or attached to something located on the ground, including, but not limited to fences, walls, berms, levees, fill, gas or liquid storage tanks, buildings and mobile/manufactured homes as defined by these Regulations, or other features that have the potential to obstruct, divert or retard flood flows.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred, as determined by a duly licensed appraiser.

Substantial Improvement: Any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the estimated cost of which as determined by a licensed contractor equals or exceeds fifty percent (50%) of the fair market value or the appraised value, whichever may be higher, of the building or structure either: A) before the improvement or rehabilitation is started, or B) if the building or structure has been damaged by any origin and is being restored, before the damage occurred. In the case of structures that have been damaged, the value of the rehabilitation or restoration must include the fair market cost of all material and labor required to return the structure to its pre-damaged condition, regardless of the actual work performed.

“Substantial Improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building or structure commences, whether or not that alteration affects the external dimensions of the building or structure. The term does not include any project for improvement of a building or structure which has been identified by the local building official to correct violations of existing state and local health, sanitary or safety code requirements; nor does it include any alteration of a building or structure listed on the National Register of Historic Places or State Inventory of Historical Places.

Variance: A grant of relief from the requirements of these Regulations that do not result in danger or damage to persons or property in floodplains in the area of jurisdiction and that permits construction or other uses of property in a manner that would otherwise be prohibited or restricted by these Regulations.

Violation: The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation

certificate, other certifications or other evidence of compliance required in these Regulations is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse: A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Watercourse Master Plan (WCMP): A hydraulic plan for a Watercourse that examines the cumulative impacts of existing development and future encroachment in the floodplain and future development in the watershed on potential flood damages, and establishes technical criteria for subsequent development so as to minimize potential flood damages for all flood events up to and including the 100-year flood.

Zone A: An area with an approximate delineation of a floodplain. Floodway boundaries and Base Flood Elevations have not been determined.

Zone AE: An area with a detailed delineation of a floodplain and in which Base Flood Elevations have been determined. Floodway may be part of the delineation.

Zone AH: An area with flood depths of one (1) to three (3) feet (usually areas of ponding); Base Flood Elevations have been determined.

Zone AO: An area with Flood depths of one (1) to three (3) feet (usually sheet flow on sloping terrain); average flood depths have been determined. For areas of alluvial fan flooding, velocities may have also been determined.

Zone AR: Special Flood Hazard Area formerly protected from the one percent (1%) annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the one percent (1%) annual chance or greater flood.

Zone A99: Area to be protected from one percent (1%) annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.

Zone D: Areas in which flood hazards are undetermined, but possible.

Zone X (shaded): Areas of 500-year flood; areas of 100-year flood with average depths of less than one (1) foot or with drainage areas less than one (1) square mile; and areas protected by levees from the 100-year flood.

Zone X (unshaded): Areas to be determined outside the 500-year floodplain.

Section 206. Definitions Pertinent to Inspection and Enforcement

In this Section, unless the context otherwise requires:

Administrative Hearing: A proceeding wherein evidence is taken for the purpose of determining an issue of fact and reaching a decision on the basis of that evidence. This proceeding takes place outside the judicial process and before a Hearing Officer who has the authority to conduct such hearings.

Administrative Search Warrant: An order in writing issued in the name of the State of Arizona, signed by a magistrate, directed to a peace officer, commanding him to accompany an appropriate official to search and inspect property in the interest of the public health, safety or welfare as part of an inspection program authorized by law.

Alleged Violator: Any person as herein defined who allegedly violates any flood control statute, regulation, ordinance, rule or terms and stipulations of a floodplain permit.

Cease and Desist Order: An order from the Floodplain Administrator prohibiting the person or entity to which it is directed from undertaking or continuing a particular activity or course of conduct.

On-Site Representative: A person who is authorized by the regulated person to accompany the District inspector or regulator on the premises.

Other Designated Representative: A person over eighteen years of age, other than an attorney, authorized in writing by the owner or alleged violator to represent them in a public hearing before the Hearing Officer. The written authorization shall be in a form sufficient to satisfy the Hearing Officer that the person has in fact been authorized to act in the owner's or alleged violator's behalf, and that they understand and agree to be bound by actions taken by the designated representative in proceedings before the Hearing Officer.

Peace Officers: Sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the Department of Public Safety, or others included in A.R.S. §1-215.28.

Remediation: Returning a site that has been disturbed to an acceptable condition of flow conveyance, erosion control, and environmental compliance by actions of the property owner or their representative.

ARTICLE THREE

FLOOD HAZARD BOUNDARIES

Section 301. Area of Jurisdiction

- A.** For floodplain management purposes and enforcement of these Regulations, area of jurisdiction means the incorporated and unincorporated areas of Maricopa County, including public lands, excluding those incorporated areas of cities or towns that have elected to assume floodplain management powers and duties pursuant to A.R.S. §48-3610.
- B.** Area of jurisdiction for floodplain management under these Regulations includes the following:
 - 1. Watercourses or areas designated as Special Flood Hazard Areas authorized in A.R.S. §48-3609(A);
 - 2. Areas with contributing watersheds with flows greater than 50 cubic feet per second (cfs) in the unincorporated areas of the county.

Section 302. Flood Hazards Not Delineated

- A.** In areas without delineated flood hazard zones where development is imminent or ongoing, the Floodplain Administrator may require developers of land to delineate floodplains to be administered under these Regulations.
 - 1. For any development, the developer shall delineate the 100-year floodplains and erosion setbacks per Arizona State Standards or other adopted technical standards developed by the District to avoid adverse impacts. Such delineations shall be consistent with criteria established by the Director, Arizona Department of Water Resources, and may be forwarded to the Federal Emergency Management Agency for adoption.
 - 2. Per 44 CFR Ch.1 et seq., if the State of Arizona has not adopted floodplain regulations, any Development on state land shall comply with local regulations.
 - 3. Other sources include, but are not limited to: A) a developer of floodplain property, B) State or County agency, C) any agency which must delineate a floodplain as a result of completion of a flood control structure, or D) the Federal Emergency Management Agency.
 - 4. Such delineations shall be submitted to the Floodplain Administrator to be reviewed for technical adequacy. The Floodplain Administrator may forward such delineations to the Arizona Department of Water Resources and to the Federal Emergency Management Agency with a recommendation for approval or denial.
 - 5. All delineations approved by the Federal Emergency Management Agency are hereby adopted as referenced and shall be included on the Flood Management Maps for Maricopa County
- B.** The Floodplain Administrator may forward to the Federal Emergency Management Agency other delineations obtained from other sources, provided they are determined to be consistent with criteria established by the Director of the Arizona Department of Water Resources.

Section 303. Basis for Establishing Special Flood Hazard Areas

The Special Flood Hazard Areas identified by the FEMA in a scientific and engineering report entitled “The Flood Insurance Study for Maricopa County, dated July 2, 1979,” with accompanying Flood Insurance Rate Maps (FIRMs), dated July 2, 1979, and all subsequent amendments and/or revisions, including Digital Flood Insurance Rate Maps, are hereby adopted by reference and declared to be a part of these Regulations. This Flood Insurance Study (FIS) and attendant mapping is the area of applicability of these Regulations and may be supplemented by studies for other areas that allow implementation of these Regulations and are recommended to the Board of Directors by the Floodplain Administrator. The Board, within its area of jurisdiction shall delineate or may require developers of land to delineate, as authorized by A.R.S. §48-3609, for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the Director of the Arizona Department of Water Resources. The FIS and FIRMs are on file at the Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, Arizona, 85009.

Section 304. Other Flood Hazard Boundaries

Whenever the Floodplain Administrator determines through a flood hazard study, Watercourse Master Plan, or other flood related study authorized by the Board that a flood related hazard exists due to such factors as high velocity flows, erosion, sediment transport, deposition, unstable soil conditions, unstable flow path, or land subsidence, the Floodplain Administrator shall designate such hazard areas on the Flood Management Maps for Maricopa County. The Floodplain Administrator shall establish technical criteria and enforce rules and regulations for subsequent development that meet criteria adopted by the Director of Arizona Department of Water Resources or as necessary to participate in the Community Rating System and National Flood Insurance Programs. When appropriate these District studies authorized by the Board may be forwarded to the Federal Emergency Management Agency.

Section 305. Watercourse Master Plans

- A. Authorization:** Pursuant to A.R.S. §48-3609.01, if the District has completed a Watercourse Master Plan, and if the plan has been adopted by the Board, the Board may adopt uniform rules for that watercourse and the Floodplain Administrator shall enforce the uniform rules within the jurisdiction using criteria that meet or exceed criteria adopted by the Director of the Arizona Department of Water Resources. Adoption of Watercourse Master Plans or uniform rules of development shall go through any public process set by state statute for districts or Board adopted procedure.
- B. Public Notification:** During the preparation of a Watercourse Master Plan, the owners of record of real property within and immediately contiguous to the watercourse or watercourses included in the planning shall be publicly notified by the Board or its agents so that the owners may have input to the planning process. In addition, the aggregate mining operations recommendation committees organized pursuant to A.R.S. §11-830(D), if any, shall be notified.
- C. Recharge Techniques:** All Watercourse Master Plans shall consider recharge techniques including but not limited to: gabions, swales, dry wells, sand tanks and small dams.

Section 306. Publication of Flood Hazard Boundaries

All flood hazard designations as authorized by these Regulations including but not limited to Erosion Control (Hazard) Zones, Watercourse Master Plans, moveable bed watercourses and other special flood related designations and, including all Zones A, AH, AO, AE, AR, A99, and Alluvial Fan Zones on the Flood Insurance Rate Maps for Maricopa County, Arizona, shall be shown on the official Flood Management Maps for Maricopa County.

For floodplain management purposes, areas that are under current flood hazard study shall be designated by the Floodplain Administrator as pending delineations on the Flood Management Maps for Maricopa County as the best technical data available awaiting final approval of the study by the Federal Emergency Management Agency.

Section 307. Public Notice

Whenever a flood hazard identification study has been authorized by the Board, the District shall publish a notice concerning the intent and scope of the study and notify affected adjacent political jurisdictions. The District shall also mail information concerning the study to affected property owners or hold a public meeting for the affected property owners.

Section 308. Determination in Case of Dispute

If the boundary of any floodplain with a Zone A delineation, floodway, floodway fringe, area of shallow flooding, including ponding areas, alluvial fans, or other flood hazard boundaries is in dispute, the Floodplain Administrator shall determine the boundary using the best technical data available. In cases where a revision of the floodway becomes necessary, the required public notice and public hearing process shall be followed and the necessary information shall be submitted to the Federal Emergency Management Agency.

(This page intentionally left blank)

ARTICLE FOUR

FLOODPLAIN USE PERMIT, APPEALS, AND VARIANCES

Section 401. Floodplain Use Permit Required

- A.** All development of land, construction of residential, commercial or industrial structures, or future development within delineated floodplain areas is subject to the terms of this regulation and other applicable regulations. A person shall not engage in any development which will divert, retard, or obstruct the flow of water in any watercourse and threaten public health or safety or the general welfare without securing written authorization from the Board or its designee. Where the watercourse is a delineated floodplain, no development shall take place in the floodplain without written authorization from the Board. Written authorization from the Board is established herein as the Floodplain Use Permit signed by the Floodplain Administrator. If the watercourse is not delineated, delineation may be required pursuant to Article Three, and once delineated, a Floodplain Use Permit shall be required prior to development.
- B.** Applications shall be submitted in accordance with the current District requirements or if applicable community formats and include the information as set forth in this Article.
- C.** The applicant shall provide any information that the Floodplain Administrator reasonably considers necessary to demonstrate that the development specified in the application complies with relevant statutes, rules, regulations, ordinances, executive orders or delegation agreements. Any such request by the District must comply with A.R.S. §48-3645(G). The applicant may also be required to provide certification that all requirements of the Floodplain Use Permit have been met as required by 44 C.F.R. Ch. 1, 60.3(a)(2).
- D.** The permittee may submit an application for the renewal of a Floodplain Use Permit for extraction of sand and gravel or other materials. The application must be submitted prior to the expiration date of the permit with sufficient time to allow for the review and approval of the permit. Failure to submit an application for the renewal of the permit before the expiration date shall cause the permit to expire and operations within the floodplain to cease and require that a permittee obtain a new permit.
- E.** A Floodplain Use Permit for extraction of sand and gravel or other materials, issued prior to adoption of these Regulations on January 17, 2018, may be placed under Voluntary Limited Suspension to extend the expiration date of a permit. The permittee may request suspension of a permit by submitting a written request to the Floodplain Administrator that contains the following information:
1. The facility location and permit number for which a suspension is being requested;
 2. The effective date of the suspension; and
 3. Current facility contact information to be maintained with the Floodplain Administrator.

If the permittee is in compliance with the current permit, the Floodplain Administrator shall issue a suspension of the existing permit for a period not-to-exceed five (5) years during a single suspension period or not-to-exceed a total of five (5) years during multiple suspension periods.

The expiration date for any permit suspended under this Section shall be extended by the total time period(s) of the suspension(s).

While a Floodplain Use Permit for extraction of sand and gravel or other materials is suspended, the permittee is required to maintain existing erosion controls; and to make repairs to the property necessitated by flood events as required by permit or agency directive. All mining, processing of material, material handling, grading, or any other activities not expressly authorized by the Floodplain Administrator within the floodplain shall cease during the suspension period(s). The suspension of the Floodplain Use Permit for extraction of sand and gravel or other materials does not limit the permittee's right to maintain or remove equipment or impact any other operations that take place entirely outside of the floodplain.

While a Floodplain Use Permit for extraction of sand and gravel or other materials within the floodplain is suspended, the Floodplain Administrator may inspect the permitted property to ensure compliance with this Section.

The permit may be reactivated by the permittee by submitting a written notification to the Floodplain Administrator fifteen (15) days prior to the resumption of operations to allow the Floodplain Administrator time to inspect the site to verify compliance with the permit. At the end of the suspension period or upon reactivation of the permit, the Floodplain Administrator will reactivate the permit with a revised expiration date reflecting the extension of the time associated with suspension period. For purposes of Section 409, only the written notification requirement and revised expiration date are appealable on a reactivated permit.

Section 402. Permit Fees

The Board has adopted a fee schedule pursuant to A.R.S. §48-3603(E) for review of permit applications and Variances from or interpretations of these Regulations. No permit shall be processed, and no permit shall be considered to be issued, until all applicable fees have been paid pursuant to these Regulations. The Fee Schedule is adopted by Resolution to be a part of these Regulations as Appendix A.

Section 403. Application Requirements

- A.** Applications for a Floodplain Use Permit, except for extraction of sand and gravel or other material, shall include:
1. A completed application form in accordance with the current District requirements or if applicable community formats signed by the property owner or their designated agent, contractor or consultant.
 2. A signed property owner authorization on District or Maricopa County form if the owner wishes to grant an agent, contractor, or consultant authority to make decisions on their behalf;
 3. A signed Warning and Disclaimer of Liability form;
 4. Plans drawn to standard engineering or architectural scale showing the nature, location, dimensions and elevation of the property, existing or proposed structures, fill, storage of materials, floodplains, and drainage facilities.

5. Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all existing and proposed structures. In Zone AO the elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures;
6. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;
7. Base Flood Elevation and Regulatory Flood Elevation data for subdivision proposals or other development greater than fifty (50) lots or five (5) acres, whichever is the lesser;
8. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
9. All information required as set forth in Article Six – Development Standards.

B. Extraction of Sand and Gravel or Other Materials

1. An application for a Floodplain Use Permit for extraction of sand and gravel or other materials may be by electronic submission or by submission of printed copies and shall include the following:
 - a. A completed Floodplain Use Permit application form;
 - b. A signed authorization if the applicant wishes to grant an agent, contractor, or consultant authority to make decisions on their behalf;
 - c. A signed acknowledgement from the property owner(s) that a Floodplain Use Permit for extraction of sand and gravel or other materials is being sought and, if applicable, designation of the applicant authorized to seek the permit;
 - d. A signed Warning and Disclaimer of Liability form;
 - e. A Plan of Development, sealed by a registered engineer, for extraction of sand and gravel or other materials, which shall contain the following:
 - 1) Administrative information that includes parcel data, site map(s), and appropriate contact information;
 - 2) A mining plan that shows the property boundaries, existing topography, the extent and depth of the area(s) to be excavated with horizontal and vertical control, appropriate benchmarks, elevations, details, cross-sections, phases and depiction of the operations area(s) including materials processing and storage, batch plants, structures and haul roads;
 - 3) A report of the engineering practices and design(s) that demonstrate there will be no adverse impacts to structures or surrounding properties from all flows up to and including the 100-year flood;
 - 4) A description of all other uses associated with the mining operation such as, but not limited to, processing of material, asphalt batch plants, concrete plants, storage areas, and access roads;
 - 5) A floodplain closure plan which causes the land to be, when the approved use is terminated, in such a condition as to maintain stability of the floodplain, to prevent flood-related-erosion or to not aggravate existing flood-related-erosion and to prevent adverse impacts to structures or property by appropriate means to protect from all

flows up to and including the 100-year flood. The plan may require financial assurances for performance of closure as may be authorized by statute.

- f. Payment of the applicable application fee and annual inspection fee identified in Appendix A of these Regulations. This permit is for the life of the facility.
2. An application to renew a Floodplain Use Permit for extraction of sand and gravel or other materials that is pending expiration shall be approved with only an administrative completeness review provided that the development has been done in accordance with permit conditions and the approved Plan of Development, the approved Plan of Development has not been modified, no flood related changes in river morphology have occurred and there is no imminent or apparent danger to structures, life or property. An application will be subject to both an administrative completeness review and substantive review if the above conditions are not met.

Renewal applies to Floodplain Use Permits for extraction of sand and gravel and other materials issued prior to adoption of these Regulations on January 17, 2018.

An application for renewal of a Floodplain Use permit for extraction of sand and gravel or other materials may be by electronic submission or by submission of printed copies and shall include the following:

- a. A completed Floodplain Use Permit application;
 - b. A signed Warning and Disclaimer of Liability form;
 - c. A letter signed by the permittee(s) or authorized representative(s) of record stating that development of the mine is in compliance with all conditions of the expiring permit and approved Plan of Development or identifying the deficiencies if development of the mine is not in compliance;
 - d. A signed and sealed letter from a registered engineer stating that floodplain conditions and river geomorphology are substantially unchanged since the expiring permit was granted, or identifying the substantial changes that have occurred;
 - e. Payment of the applicable application fee and annual inspection fee identified in Appendix A of these Regulations. This permit is for the life of the facility.
3. For extraction of sand and gravel or other materials, the Floodplain Administrator may issue a permit of short duration for an applicant participating in an ongoing application process.

Section 404. Permit Conditions

- A. Issuance of a Floodplain Use Permit, except for extraction of sand and gravel or other material, shall include the following:
 - 1. The Floodplain Administrator shall advise the applicant the issuance of a Floodplain Use Permit does not negate requirements to obtain all necessary permits from those governmental agencies from which approval is required by Federal or State law and the applicant may be required to show copies of those required permits.

2. The applicant may be required to execute deed restrictions or easements running with the land or to post performance bonds, assurances or other security to guarantee the performance of the conditions and restrictions imposed.
3. The Floodplain Use Permit is subject to review, suspension, and revocation for 1) any substantial deviation from the approved plan, or 2) for any violation of these Regulations, or 3) for any stipulation or other terms and agreements made a part of the Floodplain Use Permit not complied with.
4. The Floodplain Administrator may place a time limit and any other conditions or restrictions as part of the Floodplain Use Permit consistent with the authority of the Administrator as set forth in these Regulations.
5. The Floodplain Use Permit will automatically expire if construction has not commenced within one (1) year of permit issuance unless extended in writing by the Floodplain Administrator.
6. Approval of any map revision request (CLOMR) requiring Community Acknowledgement or Community Overview and Concurrence by FEMA may be declared null and void as determined by the Floodplain Administrator if there is a lapse of time of five (5) years or conditions have changed for the proposed development.

B. Extraction of Sand and Gravel or Other Materials

A Floodplain Use Permit for extraction of sand and gravel or other materials shall include the following:

1. The Plan of Development is subject to post-flood review and possible modification if necessary due to flood related changes in river morphology.
2. The operator of an active sand and gravel extraction operation permitted under these Regulations shall maintain a copy on site of the permit along with an approved Plan of Development bearing the approval of the Floodplain Administrator. Failure to maintain a copy on site of the approved Floodplain Use Permit and Plan of Development shall be a violation of these Regulations, subject to revocation of the Floodplain Use Permit pursuant to this Section and a fine pursuant to Section 708 of these Regulations.
3. The Floodplain Administrator may issue a permit of short duration for an applicant participating in an ongoing application process.
4. Any request for a change to an approved Floodplain Use Permit for the extraction of sand and gravel or other materials including an approved Plan of Development shall require an application to amend the permit.
5. The Floodplain Administrator shall advise the applicant that the issuance of a Floodplain Use Permit does not negate any requirements to obtain all permits from those governmental agencies from which approval is required by Federal or State law.

C. Inspections are required as part of a Floodplain Use Permit and will be conducted in accordance with all statutory requirements.

1. All permitted work shall be inspected in accordance with the specific requirements of the permit stipulations in addition to any in-progress or follow up inspections as may be deemed necessary by the applicant and District-designated inspection staff during the course of construction.
2. Facilities operating under a Floodplain Use Permit for extraction of sand and gravel or other materials shall be inspected by District-designated staff approximately every six (6) months to verify compliance with permit conditions and the Plan of Development and that no violations of these Regulations, applicable laws, or permit conditions exist.
3. Failure to obtain Final Inspection for Floodplain Use Permits other than extraction of sand and gravel or other materials within one (1) year from last inspection shall result in automatic expiration of the Floodplain Use Permit unless extended in writing by the Floodplain Administrator.
4. Pursuant to Appendix A of these Regulations, an annual inspection fee is not required for a Floodplain Use Permit for extraction of sand and gravel or other materials issued prior to adoption of these Regulations on January 17, 2018. The inspection fee is payable at the time of permit issuance and at one (1) year intervals thereafter. Payment in advance for more than one (1) year may be made at the discretion of the permittee.

D. Permit Timeframes

1. Timeframes for Floodplain Use Permit application administrative completeness and substantive review shall be in accordance with A.R.S. §48-3645 and pursuant to Appendix C of these Regulations.
2. The applicant must submit all items required for the review and approval of a Floodplain Use Permit application. If the Floodplain Administrator requests relevant items missing from the application that are necessary for review and approval of an application, the applicant shall submit all requested items for application processing to proceed.
3. The Floodplain Use Permit application shall automatically expire at one (1) year of the notice of request for additional information if no response has been received from an applicant.

Submittal after the year shall be treated as a new application and subject to all submittal requirements and fees. If the applicant is unable to meet this timeframe, a request for extension shall be requested in writing and a written extension may be authorized by the Floodplain Administrator.

- E. The rights and responsibilities under a Floodplain Use Permit for any development including extraction of sand and gravel or other materials are non-delegable and cannot be transferred without the written authorization of the Floodplain Administrator.

Section 405. Elevation and Floodproofing Certificates

- A. After obtaining a Floodplain Use Permit and prior to Final Inspection, a complete, correct, and current FEMA Elevation Certificate form prepared by an Arizona Registered Professional Engineer or Land Surveyor shall be submitted to the Floodplain Administrator prior to occupancy or use of any building within a Special Flood Hazard Area designated on the Flood Management

Maps, except those uses exempted by applicable law. The authority to complete the required elevation certificate within a Zone AO may be delegated by the Floodplain Administrator.

- B.** A complete, correct, and current FEMA Floodproofing Certificate form prepared by an Arizona Registered Civil Engineer shall be submitted for any development that has not been elevated up to the Regulatory Flood Elevation as approved by the Floodplain Administrator.
- C.** Encroachment Certification: Any development in a floodway must be reviewed to determine if the development will increase flood heights. An engineering analysis must be conducted before a permit may be issued. A record of the results of this analysis shall be part of the permit file, which may be in the form of a No-rise Certification for Floodways. This No-rise Certification must be supported by technical data and signed by a registered professional engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).
- D.** The Floodplain Administrator shall maintain a record of all Elevation and Floodproofing Certificates and may record such certification with the office of the Maricopa County Recorder in a manner so that it appears in the chain of title of the affected parcel of land.

Section 406. Allowed Uses

In accordance with A.R.S. §48-3609(H), unless expressly provided, nothing in these Regulations shall affect the uses of property described below.

1. Existing legal uses of property or the right to continuation of such legal uses. However, if a legal nonconforming use of land, or a building or structure is discontinued for twelve consecutive months or destroyed to the extent of fifty percent (50%) of its market value, as determined by a competent appraiser, any further use shall comply with these Regulations.
2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or on the date any regulations affecting such property take effect, except that any alteration, addition, rehabilitation or repair to a legal nonconforming building or structure regardless of the cost of the work performed as determined by a licensed contractor which would result in increasing its flood damage potential by fifty percent (50%) or more of the value of such building or structure prior to alteration, addition, rehabilitation or repair, as determined by a competent appraiser shall be either floodproofed or elevated to or above the Regulatory Flood Elevation. On February 25, 1974, the Maricopa County Board of Directors and the Board of Supervisors adopted the 1974 Floodplain Regulations for unincorporated areas of Maricopa County with certain amendments recommended by the Planning and Zoning Director and the sand and gravel industry's suggested revisions to be effective on that day. This is the date used for purposes of establishing existing legal nonconforming use on all properties. The Floodplain Regulations have been subsequently revised and amended in response to changes in the State Statutes and Code of Federal Regulations pertaining to the National Flood Insurance Program.
3. Reasonable repair of structures constructed with the written authorization required by A.R.S. §48-3613.
4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to Title 40, Chapter 2, Article 6.2 of the Arizona Revised Statutes.

Section 407. Exceptions: Review of Plans

In accordance with A.R.S. §48-3613(B) written authorization, established in these Floodplain Regulations as a Floodplain Use Permit, is not required for nor shall the Board of Directors of the Flood Control District prohibit development referenced in §48-3613(B) in a watercourse. Except that before any construction may begin, the person must submit plans for construction to the Board for review and comment. Floodplain Management staff reviews the submitted plans on behalf of the Board. The Floodplain Use Permit – Clearance Review paperwork serves as a record that the plans were submitted for the required review and comment.

Exceptions to these Regulations are as set out in A.R.S. §48-3613(B) & (C) and noted below.

1. Construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads, and streets intersecting or crossing a watercourse.
2. Construction of dams for the conservation of flood waters as permitted by Title 45, Chapter 6 of the Arizona Revised Statutes and construction of storage dams for watering livestock or wildlife and structures on the banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse.
3. Construction of tailing dams and waste disposal areas used in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that may divert, retard or obstruct the flow of waters in a watercourse from complying with and acquiring authorization pursuant to these Regulations.
4. Other construction upon determination by the Board that written authorization is unnecessary.
5. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under A.R.S. Title 48, Chapter 21, Article 1.
6. Construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.
7. Construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

Section 408. Personal Liability

The exceptions contained in Section 407 do not relieve any person from liability if that person's actions cause flood damage to any other person or property.

Section 409. Appeals – Applicant Requirements

- A. Any person may file an appeal to the Floodplain Review Board if they feel that there is an alleged error or doubt in the interpretation of these Regulations, or that due to unusual circumstances

attaching to their property an unnecessary hardship is being inflicted on them, or if there is a dispute between the person and district employees, or if location of a floodway or floodplain is in doubt.

- B.** After substantively complying with A.R.S. §48-3649, an applicant for a Floodplain Use Permit may file an appeal seeking an interpretation of these Regulations if the meaning of a word, phrase or section is in doubt; or an applicant may file an appeal challenging a denial of a Floodplain Use Permit. A regulated person, if there is a dispute between the regulated person and district employees of a final decision of a district based on the results of an inspection, may file an appeal to the Floodplain Review Board seeking an interpretation of the regulations if the meaning of a word, phrase or section is in doubt.
- C.** Appeals are heard by the Floodplain Review Board. Appeals shall be filed with the Floodplain Administrator within thirty (30) calendar days of the receipt of notice of the decision to be appealed, or sixty (60) calendar days from the date of the decision whichever is earlier. The notice of appeal shall be in writing on a form provided by the Floodplain Administrator and shall state the name and address of the person requesting the interpretation, the regulation that requires clarification, any facts relevant to the requested interpretation and the person's proposed interpretation of the applicable regulation.
- D.** Any appellant aggrieved by a decision of the Floodplain Review Board may, within thirty (30) days of such decision, appeal to the Board of Directors by filing a written notice of appeal with the Clerk of the Board on a form provided by the Floodplain Administrator. Said notice shall state the name and address of the person requesting the interpretation, the regulation that requires clarification, any facts relevant to the requested interpretation and the person's proposed interpretation of the applicable regulation.
- E.** Any appellant aggrieved by a decision of the Board of Directors may file a special action in Superior Court of the State of Arizona.

Section 410. Floodplain Variance – Applicant Requirements

A. Purpose of Variances:

Pursuant to §48-3609(B)(7), Variances from these Regulations may be granted that do not result in danger or damage to persons or property in floodplains in the area of jurisdiction. Variances may be granted only if special circumstances, such as size, shape, topography, location or surroundings of the property, would cause the strict application of these Regulations to deprive the property of privileges enjoyed by similar property in the floodplain. A Variance is subject to conditions to ensure that the Variance does not constitute a grant of special privileges inconsistent with the limitations on similar property in the floodplain.

B. Conditions for the issuance of a Variance:

- 1.** A Variance for relief from these Regulations may be issued by the Floodplain Administrator, Floodplain Review Board, or affirmed by the Board of Directors when development does not result in danger or damage to persons or property in floodplains and all of the following criteria are met:
 - a.** That no increase in the Base Flood Elevation would result and that no increase in flood levels within any designated floodway during the base flood discharge would result;

-
- b. That special circumstances, such as size, shape, topography, location or surroundings of the property, would cause the strict application of the Regulations to deprive the property of privileges enjoyed by similar property in the jurisdictional floodplain;
 - c. That the Variance does not constitute a grant of special privileges inconsistent with the limitations on similar property in the jurisdictional floodplain;
 - d. That the Variance requested is the minimum necessary, considering the flood hazard, to afford relief;
 - e. That there is a showing of good and sufficient cause;
 - f. That a determination that failure to grant the Variance would result in exceptional hardship to the applicant;
 - g. Variances may be issued for the repair, rehabilitation, or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures' continued designation as a historic structure and the Variance is the minimum necessary to preserve the historic character and design of the structure.
 - h. Variances shall only be issued upon showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 205 of these Regulations in the definition of "Functionally Dependent Use";
 - i. That granting the Variance will not result in additional threats to public safety, extraordinary public expense, create a nuisance, the victimization of or fraud on the public; and
 - j. That the Variance does not conflict with existing local laws or ordinances.
2. In addition to the above requirements, the Floodplain Administrator, Board of Directors or the Floodplain Review Board, may attach such conditions or restrictions to the granting of a Variance as it determines necessary to eliminate potential threats to public safety or to public or private property resulting from the granting of the Variance.
 3. The burden of proof of compliance with each of the above conditions shall be on the applicant.
 4. Variances shall not be issued within any floodway if any increase in flood levels during the base flood would result.
- C.** Generally, Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided the procedures of Articles One and Six of these Regulations have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing Variances increases.

Section 411. Floodplain Review Board Duties

The Floodplain Review Board shall have the powers and duties as set forth in A.R.S. §48-3612.

A. Appeals of Administrative Decisions

The Floodplain Review Board shall sit in review and make decisions interpreting these Regulations if the meaning of a word, phrase or section is in doubt, if there is a dispute between the appellant and district employees or if a location of a floodway or floodplain is in doubt.

1. Appeals may be taken to the Floodplain Review Board pursuant to A.R.S. §48-3612(B) and A.R.S. §48-3642.
2. The Floodplain Review Board shall fix a time for hearing the appeal and give notice to the parties in interest and to the public as set forth herein. The Floodplain Review Board shall hear and decide the appeal within a reasonable time.
3. Property shall be posted pursuant to procedures adopted by the Floodplain Review Board.
4. Any interpretation of the regulations issued by the Floodplain Review Board shall only affect the dispute between the appellant and district employees. If the district wants to expand the application of the Floodplain Review Board's interpretation of the regulations, the district shall follow the procedures required by Maricopa County's Enhanced Regulatory Outreach Program Policy.

B. Floodplain Variances

The Floodplain Review Board shall allow Variances from the terms of these Regulations pursuant to A.R.S. §48-3609(B)(7) and §48-3612.

1. In considering the request for a Variance, the Floodplain Review Board shall consider all technical evaluations, standards specified in other sections of these Regulations, and all relevant factors including as applicable:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The necessity to the facility of a waterfront location;
 - e. The availability of alternative locations on the property for the proposed use, which are not subject to flooding or erosion damage;
 - f. The compatibility of the proposal with any program adopted by the District for floodplain management as defined in 44CFR 59.1, for the applicable area;
 - g. The safety of access to the property in time of flood for ordinary and emergency vehicles;
 - h. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
 - i. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.

-
2. Upon consideration of the factors of this Section and the purposes of these Regulations, the Floodplain Review Board may attach such conditions to the granting of Variances as it deems necessary to further the purposes of these Regulations.
 3. Any applicant to whom a Variance is granted shall be given written notice over the signature of a community official that:
 - a. The issuance of a Variance to construct a structure below the Regulatory Flood Elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
 - b. Such construction below the regulatory flood elevation increases risks to life and property; and
 - c. The land upon which the Variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided by A.R.S. § 37-610. A copy of the notice shall be recorded in the office of the Maricopa County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
 4. If the Floodplain Review Board has cause to believe, after approval of a Variance, that any stipulations or conditions may have been violated, it may set a hearing for the purpose of determining possible revocation of the Variance for such violation. The Floodplain Review Board may revoke the Variance for finding a violation of the stipulations or conditions, or it may grant a limited time within which to correct the violation in order to avoid revocation of the Variance.
- C. A person aggrieved in any manner by an action of the Floodplain Review Board may within thirty days appeal to the Flood Control District Board of Directors per the provisions of Section 409(D) and (E).

Section 412. Recordation and Notification

A. Recordation/Notification of Variance

Upon the granting of a Variance for the construction of a dwelling unit or commercial or industrial structure, where the construction of such unit or structure is otherwise contrary to these Regulations, the Board shall notify the grantee in writing that:

1. The issuance of the Variance may result in increased premium rates for flood insurance. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a Variance. [44 CFR 60.6(a)]
2. Construction below the Regulatory Flood Elevation will increase risks to life and property and flooding may occur by channel meander or by a more frequent flood or a larger flood than the 100-year flood event;
3. The structure or the land upon which the structure is located is ineligible for exchange of land pursuant to any flood relocation and land exchange program.

4. The original of the above written notice shall be recorded with the Maricopa County Recorder in a manner so that it appears in the chain of title of the affected parcel of land. Proof of such recordation shall be maintained on file with the Floodplain Administrator and be available to any agency requiring any subsequent permits.
5. The Floodplain Administrator shall maintain a record of all Variance actions.

B. Recordation of Flood Hazard Determination

Upon approval of a Floodplain Use Permit, or when through the course of performing other authorized duties it is determined that any portion of a parcel of land is within a delineated flood hazard zone, or a previously noticed parcel has been removed from the delineated flood hazard zone, a notice of such determination may be recorded with the office of the Maricopa County Recorder in a manner so that it appears in the chain of title of the affected parcel of land. The Floodplain Administrator may also record the Floodplain Use Permit.

C. Recordation of Floodplain Violations

The Floodplain Administrator may cause to have recorded any notice of violation or non-compliance issued pursuant to Section 702.

(This page intentionally left blank)

ARTICLE FIVE

ALLOWABLE DEVELOPMENT

Section 501. Zone AE Floodway

(Reference Article Six, Section 602 for applicable Development Standards.)

A. Within Zone AE Floodway the following uses are allowed with a properly issued Floodplain Use Permit:

1. Accessory residential uses including, but not limited to, lawns, gardens, parking areas, and play areas.
2. Agricultural uses including, but not limited to, general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, sod farming, and wild crop harvesting.
3. Drive-in theaters, roadside stands, signs, and billboards.
4. Fencing that is open or breakaway to allow for conveyance.
5. Industrial-commercial development including, but not limited to, loading areas, airport landing strips, and parking areas.
6. Marinas, boat rentals, docks, piers and wharves.
7. Operations for extraction of sand and gravel and other materials.
8. Private and public recreational development including, but not limited to, golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
9. Privately owned and maintained dikes and culverts.
10. Railroads, privately owned and maintained streets, bridges, utility transmission lines, and pipelines.
11. Cell tower projects, if no increase in the Base Flood Elevation would result and no increase in flood levels within the designated floodway during the base flood discharge would result.
12. Stockyards, corrals, and shade structures.

B. Prohibited or Conditioned Uses

1. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

3. Encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge (no-rise).

Section 502. Zone AE

(Reference Article Six, Sections 601 and 603 for applicable Development Standards.)

Within Zone AE the following uses are allowed with a properly issued Floodplain Use Permit:

1. Any development permitted in Section 501.
2. Structures and buildings, including dwellings and mobile/manufactured homes, additions, improvements, recreational vehicles, and other residential development.
3. New and replacement water supply systems, water treatment and sewage collection and disposal systems provided that they are designed to prevent or minimize floodwater contamination during the base flood.
4. New and replacement sanitary sewage systems, provided that they are designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, unless otherwise allowed by a permit in conformance with the Federal Water Pollution Control Act.
5. Septic systems and solid waste landfills, whether public or privately owned, provided that they are located in such a way as to avoid impairment to them or contamination from them during flooding and provided that no part of a solid waste landfill is within one-half mile of a 100-year floodplain that has 100-year year flows in excess of twenty-five thousand (25,000) cubic feet per second as determined by the Federal Emergency Management Agency.
6. Any other development which will not be subject to substantial flood damage and will not cause a hazard to life or property or to the public. These may include uses that can be readily removed from delineated floodplain areas during times of flooding.

Section 503. Zone A Non-Alluvial, Zone A Ponding, and Zone A Shallow Flooding

(Reference Article Six, Sections 601, 604, 605, or 606 for corresponding applicable Development Standards.)

Any development permitted in Sections 501 and 502 that will not increase the threat of flooding to surrounding property, and any other development not specifically named in Sections 501 or 502 provided the applicant submits an analysis of the Zone A Floodplain consistent with Article Six. Such analysis shall be subject to review and approval by the Floodplain Administrator prior to issuance of a Floodplain Use Permit and may be forwarded to the Federal Emergency Management Agency as described in Article Three, Section 303.

Section 504. Zone AH Ponding

(Reference Article Six, Sections 601 and 607 for applicable Development Standards.)

Any development permitted in Sections 501 and 502 that will not increase the threat of flooding to surrounding property, and any other development not specifically named in Sections 501 or 502 provided the applicant submits an analysis of the Zone AH Floodplain consistent with Article Six.

Such analysis shall be subject to review and approval by the Floodplain Administrator prior to issuance of a Floodplain Use Permit and may be forwarded to the Federal Emergency Management Agency in the manner described in Article Three, Section 303.

Section 505. Zone AO Ponding Area, Zone AO Shallow Flooding, Zone AO Alluvial Fan

(Reference Article Six, Sections 601, 608, 609, or 610 for corresponding applicable Development Standards.)

Any development permitted in Sections 501 and 502 that will not increase the threat of flooding to surrounding property, and any other development not specifically named in Sections 501 or 502 provided the applicant submits an analysis of the Zone AO Floodplain consistent with Article Six. Such analysis shall be subject to review and approval by the Floodplain Administrator prior to issuance of a Floodplain Use Permit and may be forwarded to the Federal Emergency Management Agency in the manner described in Article Three, Section 303.

Section 506. Zone A Alluvial Fan Administrative Floodway

(These include Zone A Alluvial Fan High Hazard Area Administrative Floodway, Zone A Alluvial Fan Uncertain Flow Distribution Area Administrative Floodway, and Zone A Approximate Alluvial Fan Administrative Floodway)

(Reference Article Six, Sections 602, 611, 612 or 613 for corresponding applicable Development Standards.)

A. Within Zone A Alluvial Fan Administrative Floodway the following uses are allowed with a properly issued Floodplain Use Permit:

1. Accessory residential uses including, but not limited to, lawns, gardens, parking areas and play areas.
2. Agricultural uses including, but not limited to, general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, sod farming, and wild crop harvesting.
3. Drive-in theaters, roadside stands, signs, and billboards.
4. Fencing that is open or breakaway to allow for conveyance.
5. Industrial-commercial development including, but not limited to, loading areas, airport landing strips, and parking areas.
6. Marinas, boat rentals, docks, piers, and wharves.
7. Operations for extraction of sand and gravel and other materials.

8. Private and public recreational uses including, but not limited to, golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, wildlife and nature preserves, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails.
9. Privately owned and maintained dikes and culverts.
10. Railroads, privately owned and maintained streets, bridges, utility transmission lines and pipelines.
11. Cell tower projects, if no increase in the Base Flood Elevation would result and no increase in flood levels within the designated floodway during the base flood discharge would result.
12. Stockyards, corrals, and shade structures.

B. Prohibited or Conditioned Uses

1. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

Section 507. Zone A Alluvial Fan

(Reference Article Six, Sections 601 and 614 for applicable Development Standards.)

Any development permitted in Sections 501 and 502 that will not increase the threat of flooding to surrounding property. Any other development not specifically named in Sections 501 or 502 provided the applicant submits an analysis of the Zone A floodplain consistent with Article Six. Such analysis shall be subject to review and approval by the Floodplain Administrator prior to issuance of a Floodplain Use Permit and may be forwarded to the Federal Emergency Management Agency in the manner described in Article Three, Section 303.

Section 508. Other Flood Hazard Zones

(Reference Article Six, Sections 601 and 615 for applicable Development Standards.)

This article regulates development located in Flood Hazard Zones designated by the Floodplain Administrator not specifically regulated elsewhere in these Regulations including but not limited to erosion hazard zones, Watercourse Master Plans, Area Drainage Master Plans, moveable bed watercourses, and other special flood related designations determined based upon authorized studies. Additional criteria include:

1. New development and substantial improvement to existing development shall require a Floodplain Use Permit and are subject to the provisions of Article Four. Issuance of a Floodplain Use Permit does not exempt the holder of the Floodplain Use Permit from any additional requirements necessary to obtain flood insurance.
2. Development for which a Floodplain Use Permit may be granted are: development permitted elsewhere in these Regulations provided the applicant submits technical information which demonstrates that neither the development nor the specific flood hazard will be adversely affected by such development.

ARTICLE SIX

PROVISIONS FOR FLOOD HAZARD REDUCTION

Section 601. General Development Standards

(Applicable to all Allowable Development as identified in Article Five, except Sections 501 and 506)

When a Floodplain Use Permit is required pursuant to Section 401, these Development Standards shall apply in all Special Flood Hazard Areas except Zone AE Floodway and Alluvial Fan Administrative Floodway. See additional requirements for specific Flood Hazard Zones in Sections 602 through 615. All standards should be read and applied pertinent to development proposed.

A. General

1. Residential homes with a basement are not permitted within the 100-year floodplain.
2. All new construction and/or substantial improvements to any existing structure shall be constructed with methods and practices that minimize flood damage, with materials and utility equipment resistant to flood damage.
3. Residential construction, new or substantial improvement, other than mobile/manufactured homes shall have the lowest floor, including basement, elevated to or above the Regulatory Flood Elevation as required in these Regulations.
4. All utilities (electrical, heating, ventilation, plumbing, and air conditioning equipment or other service facilities, including ductwork), shall be floodproofed up to, or located above, the Regulatory Flood Elevation, and designed to prevent water from entering or accumulating within the components during conditions of flooding. See Section 601(G)2 for floodproofing certification.
5. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. All manufactured homes shall meet the anchoring standards of Section 601.B.1.
6. Fences in the floodplain shall have openings required based on location and type to allow conveyance of flows and that will withstand the effects of water pressure in all directions and allow equalization preventing collapse and failure.
7. In order to control erosion and preserve the natural and beneficial functions of the floodplain, removal of vegetation shall be the minimum necessary for the development.
8. Adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures are required.
9. For buildings elevated greater than five (5) feet, enclosures, including breakaway walls, below the Base Flood Elevation are prohibited. Screening and open latticework is not considered an enclosure. Applicant must sign a non-conversion agreement, agreeing not to enclose the area for habitable use.

-
- 10.** All new construction and substantial improvements with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement, and are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- a.** Designs for meeting this requirement must meet or exceed the following minimum criteria for non-engineered openings:
- A minimum of two (2) openings, on at least two (2) sides, having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above finished grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they allow the automatic entry and exit of floodwaters.
- b.** Alternatively, a registered engineer or architect may design and certify engineered openings.
- Designs for meeting these criteria shall be certified on a Flood Proofing Certificate by an Arizona Registered Professional Engineer; or Architect.
- 11.** Buildings other than dwellings may have the lowest floor below the Regulatory Flood Elevation provided that all of the following conditions are met for dry-floodproofing:
- a.** They shall be watertight with walls substantially impermeable to the passage of water; and
- b.** Structural components and utilities, including ductwork shall have the capacity of resisting the effects associated with a base flood; and
- c.** Designs for meeting these criteria shall be certified on a Flood Proofing Certificate by an Arizona Registered Professional Engineer or Architect.
- 12.** Storage containers (i.e., shipping containers) designed to be watertight with walls substantially impermeable to the passage of water and the capacity of resisting the effects associated with a base flood shall not be required to have openings as required in Section 601(A)10. Anchoring may be required.
- 13.** When the improvements, modifications, additions, reconstruction or repairs reach the fifty percent (50%) substantial improvement threshold, then the entire structure must be brought into compliance. The value of the improvements, modifications, reconstruction, repair or additions is counted cumulatively for five (5) years to determine whether the substantial improvement threshold has been met.
- 14.** For all new construction and substantial improvements, the building material below the Regulatory Flood Elevation shall be of flood-resistant material. Flood-resistant materials include any building product capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. Prolonged contact means at least 72 hours, and significant damage is any damage requiring more than low-cost cosmetic repair (such as painting). Additional information can be found in FEMA Technical Bulletins. Materials include, but are not limited to the following:
- a.** Concrete, concrete block, or glazed brick;
- b.** Clay, concrete, or ceramic tile;
- c.** Galvanized or stainless steel nails;

- d. Indoor-outdoor carpeting with synthetic backing (not fastened down);
 - e. Vinyl, terrazzo, rubber, or vinyl floor covering with waterproof adhesives;
 - f. Metal doors and window frames;
 - g. Polyester-epoxy paint;
 - h. Stone, slate, or cast stone;
 - i. Mastic, silicone, or polyurethane formed-in-place flooring;
 - j. Styrofoam insulation;
 - k. Water resistant glue;
 - l. Pressure treated (.40 CCA minimum) or naturally decay-resistant lumber, or marine grade plywood.
15. All recreation vehicles in accordance with 44 CFR 60.3(C)(14) placed on site will either:
- a. Be on-site for fewer than 180 consecutive days, and be fully licensed and ready for highway use. A recreation vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - b. Meet the permit requirements of Article Four of these Regulations and the elevation and anchoring requirements for manufactured homes in Section 601.

B. Mobile/Manufactured Homes/Manufactured Buildings

1. All mobile/manufactured homes/manufactured buildings including permanently placed recreation vehicles and modular buildings shall be elevated so that the bottom of the structural frame is at or above the Regulatory Flood Elevation and is anchored to an adequately anchored foundation system to prevent flotation, collapse or lateral movement. Methods of anchoring may include, but not be limited to, use of over-the-top or frame ties to ground or foundation anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind force. Specific requirements shall be as follows:
- a. Over the top or frame ties shall be provided at each of the four corners of the mobile/manufactured home, with additional ties on each side at intermediate locations;
 - b. Mobile/manufactured homes more than fifty (50) feet long require one (1) additional tie per side;
 - c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds;
 - d. Adequate surface drainage and access for a hauler are provided;
 - e. If the mobile/manufactured home is elevated on piers, setbacks shall be sufficient to permit steps; pier foundations shall be placed in stable soil no more than ten (10) feet apart, and reinforcement is provided for piers more than six (6) feet above ground level. A scour analysis may be required when elevating on piers;
 - f. Any additions to the mobile/manufactured home shall be similarly anchored; and

2. Fill material in excess of the amount required to satisfy Section 601.D.1 shall not conflict with drainage or floodplain regulations. Fill material shall not be greater than is necessary to achieve the purpose for which it is intended.
3. Adequate erosion protection shall be provided for fill slopes exposed to moving floodwaters (slopes exposed to flows with velocities of up to five (5) feet per second (fps) during the base flood must, at a minimum, be protected by a permanent cover of grass, vines, weeds, or similar vegetation; slopes exposed to flows with velocities greater than five (5) fps during the base flood must, at a minimum, be protected by appropriately designed stone, rock, concrete, or other durable materials).
4. Fill material for purposes other than solid waste landfills shall not include solid waste, wood, or other buoyant materials nor hazardous, toxic or deleterious material and shall be protected as needed against scour and erosion by riprap or other protective measures as approved by the Floodplain Administrator.

E. Garages and Accessory Structures

1. Attached Garages
 - a. A garage attached to a residential structure, constructed with the garage floor slab below the regulatory flood elevation, must be designed to allow for the automatic entry and exit of floodwaters. Areas of the garage below the Regulatory Flood Elevation must be constructed with flood resistant materials.
 - b. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed as required in Section 601(A)11.
 - c. Applicable Standards in Section 601(A) and (B) shall apply to attached garages.
2. Detached Garages and Accessory Structures
 - a. An accessory structure used solely for parking or limited storage may be constructed such that its floor is below the Regulatory Flood Elevation, provided the structure is designed and constructed in accordance with the following requirements:
 - 1) Use of the accessory structure must be limited to parking or limited storage;
 - 2) The portions of the accessory structure located below the Regulatory Flood Elevation must be built using flood-resistant materials as identified in 601(A)14;
 - 3) The accessory structure must be adequately anchored to prevent flotation, collapse, and lateral movement;
 - 4) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the Regulatory Flood Elevation;
 - 5) The accessory structure must comply with floodway encroachment provisions in these Regulations; and
 - 6) The accessory structure must be designed to allow for the automatic entry and exit of floodwaters in accordance with Section 601(A)10 for wet floodproofing.
 - b. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in these Regulations.

F. Landfills / Extraction of Sand and Gravel and Other Materials

1. Permitted landfills shall be protected against scour, erosion, and contamination by the 100-year flood event.
2. Extraction of sand and gravel and other materials operations shall meet the requirements of this Article where applicable.

G. Other Requirements

1. Issuance of a Floodplain Use Permit does not exempt the holder of the Floodplain Use Permit from any additional requirements necessary to obtain flood insurance.
2. The applicant shall provide an Elevation and/or Flood Proofing Certificate prepared by an Arizona Registered Professional Engineer or Land Surveyor to the Floodplain Administrator certifying that the elevation or flood proofing requirement has been met when required. A separate certificate of the appropriate type shall be furnished for each building.
3. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
4. Storage of other material or equipment may be allowed if approved by the Floodplain Administrator if it will not be subject to major damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

Section 602. AE Floodway

(Applicable to Article Five, Section 501 Allowable Development)

A. General Requirements

Standards in addition to Section 601 for development in AE Floodway are:

1. Any development in a floodway must be reviewed to determine if the project will increase flood heights. An engineering analysis must be conducted before a permit can be issued. A record of the results of this analysis shall be part of the permit file, which can be in the form of a No-rise Certification as required by Section 405(C).
2. Regulatory Flood Elevation is one (1) foot above the floodway elevation or one (1) foot above the Base Flood Elevation, whichever is higher.
3. Septic systems, whether public or privately owned, shall not be located wholly or partially within a floodway.
4. In accordance with A.R.S. §49-772(A)(2) solid waste landfills or any part of such facility, whether public or privately owned, shall not be located wholly or partially within a floodway or within one-half mile of a one-hundred year floodplain that has one hundred year flows in excess of twenty-five thousand (25,000) cubic feet per second, as determined by the Federal Emergency Management Agency. A.R.S. §49-772(C) applies to non-FEMA Floodplains.
5. Any fill material proposed in the floodway must be shown by the applicant to have no-rise. The amount of fill material shall not be greater than is necessary to achieve the purpose for

which it is intended as demonstrated by a plan submitted by the applicant indicating the uses to which the filled land will be put, the final dimensions, and the extent of the proposed fill material.

Such fill material shall not include junk, trash, tires, garbage, wood or other buoyant materials, or hazardous, toxic or deleterious materials, and shall be protected against scour and erosion.

6. Structures and development permitted within the floodway shall not include buildings, shall be located so as to minimize obstruction to flood flows with any utilities floodproofed, and shall not be designed or utilized for human habitation.
7. The processing or the outside storage of materials and equipment may be permitted if flooding would cause minimal damage to the material or equipment and such material or equipment is either non-buoyant or firmly anchored or located so as to prevent flotation or is maintained in a readily transportable condition so as to be readily removed from the area within the time available after flood warning.
8. In order to control erosion and preserve the natural and beneficial functions of the floodplain, removal of vegetation shall be the minimum necessary for development.

B. Mining/Extraction of Sand and Gravel and Other Materials in AE Floodway

1. The applicant shall show that excavations will not have a cumulative adverse impact and not be of such depth, width, length, or location as to divert, retard, or obstruct flood water and present a hazard to life, property, or the watercourse in which they are located, and that they will comply with any applicable Watercourse Master Plan adopted by the Board of Directors.
2. Excavations shall not be permitted so close to any floodway crossings, utility structures or facilities as to cause or have the potential to cause an adverse impact on such crossings, utilities or similar facilities.
3. No stockpiling of tailings, overburden or sand and gravel which may obstruct, divert, retard or disrupt the continuity of the natural flow of water shall be permitted, unless otherwise required by state or federal regulations and approved by the Floodplain Administrator.
4. In order to control erosion and preserve the natural and beneficial functions of the floodplain, removal of vegetation shall be the minimum necessary for the development, and in accordance with the approved Plan of Development.
5. Erosion setbacks and erosion hazard zones within the 100-year floodplain shall meet the State of Arizona State Standards or minimum technical standards determined by the Floodplain Administrator to prevent adverse impacts to structures or property.

Section 603. Zone AE

(Applicable to Article Five, Section 502 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional Standards in Zone AE are:

1. The Regulatory Flood Elevation is two (2) feet above the Base Flood Elevation if no floodway has been delineated. If a floodway has been delineated then the Regulatory Flood Elevation is one (1) foot above the floodway elevation or one (1) foot above the Base Flood Elevation, whichever is higher.

2. For Elevation Certificate purposes, the adjacent grade in an AE Zone is finished grade.
3. A Floodplain Use Permit for the extraction of sand and gravel or other materials within Zone AE shall be granted under the same conditions as Section 602. The following additional conditions are:
 - a. Dikes or levees are permitted provided it can be shown by the applicant that such dikes or levees will not adversely affect structures, road or utility crossings, easements, or right-of-way or other public or private property, and will not cause erosion or diversion of flood flows onto property outside the delineated floodplain, and will not create a danger to life or property.
 - b. The stockpiling and processing of material may be permitted by the Floodplain Administrator.

Section 604. Zone A (non-alluvial)

(Applicable to Article Five, Section 503 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional Standards for Zone A are:

1. The Regulatory Flood Elevation is two (2) feet above the community determined Base Flood Elevation. The Elevation Certificate specifies that when a BFE cannot be determined and an RFE based on flood depth is used then the structure must comply with these Regulations.
2. For Elevation Certificates, the adjacent grade is natural grade, unless a datum Base Flood Elevation is determined, then the adjacent grade is finished grade.
3. Extraction of sand and gravel and other materials operations shall meet the Development Standards of Section 602 or Section 603, whichever is applicable. The applicant for a sand and gravel permit in Zone A shall delineate the floodway portion of the floodplain.

Section 605. Zone A Ponding

(Applicable to Article Five, Section 503 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional requirements for Zone A Ponding Area are:

1. The Regulatory Flood Elevation is one (1) foot above the height of the effective outfall or the height of the feature causing the ponding.
2. For Elevation Certificate purposes, the adjacent grade is finished grade.
3. Any volume displacement shall be equally compensated for from within the same ponding area.
4. The effective lateral conveyance shall be preserved.
5. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 606. Zone A Shallow Flooding

(Applicable to Article Five, Section 503 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional standards for Zone A Area of Shallow Flooding are:

1. The Regulatory Flood Elevation is two (2) feet above the community determined Base Flood Elevation.
2. For Elevation Certificate purposes, adjacent grade is natural grade.
3. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 607. Zone AH Ponding

(Applicable to Article Five, Section 504 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional Development Standards for Zone AH Ponding are:

1. The Regulatory Flood Elevation is one (1) foot above the Base Flood Elevation.
2. For Elevation Certificate purposes, the adjacent grade is finished grade.
3. Any volume displacement shall be equally compensated for from within the same Ponding Area.
4. The effective lateral conveyance shall be preserved.
5. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 608. Zone AO Ponding Area

(Applicable to Article Five, Section 505 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional Development Standards for Zone AO are:

1. The Regulatory Flood Elevation is one (1) foot above the flood depth.
2. For Elevation Certificate purposes, the adjacent grade is natural grade.
3. Any volume displacement shall be equally compensated for from within the same Ponding Area.
4. The effective lateral conveyance shall be preserved.
5. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 609. Zone AO Shallow Flooding

(Applicable to Article Five, Section 505 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional Development Standards for Zone AO are:

1. The Regulatory Flood Elevation is one (1) foot above the flood depth.
2. For Elevation Certificate purposes, the adjacent grade is natural grade.
3. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 610. Zone AO Alluvial Fan

(Applicable to Article Five, Section 505 Allowable Development)

Development shall meet Section 601 General Development Standards. Additional Development Standards for Zone AO are:

1. The Regulatory Flood Elevation is one (1) foot above the flood depth.
2. For Elevation Certificate purposes, the adjacent grade is natural grade.
3. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 611. Zone A Alluvial Fan High Hazard Area Administrative Floodway

(Applicable to Article Five, Section 506 Allowable Development)

Development within an Alluvial Fan High Hazard Area, as determined using the Piedmont Assessment Manual shall be regulated in a manner similar to a Floodway as described in Article Six, Sections 602 of these Regulations. Additional Development Standards for Zone A Alluvial Fan High Hazard Area Administrative Floodway are:

1. Only major engineering measures as outlined in the Piedmont Manual may be used to mitigate the alluvial fan flood hazard in these areas.
2. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 612. Zone A Alluvial Fan Uncertain Flow Distribution Area Administrative Floodway

(Applicable to Article Five, Section 506 Allowable Development)

Development within an Alluvial Fan Uncertain Flow Distribution Area as determined using the Piedmont Assessment Manual shall be regulated in a manner similar to a floodway as described in Article Six, Sections 602 of these Regulations. Additional Development Standards for Zone A Alluvial Fan Uncertain Flow distribution Administrative Floodway are:

1. Only major engineering measures as outlined in the Piedmont Manual may be used to mitigate the alluvial fan flood hazard in these areas.
2. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 613. Zone A Approximate Alluvial Fan Floodway Administrative Floodway

(Applicable to Article Five, Section 506 Allowable Development)

Development within an Alluvial Fan Floodway as determined using the Piedmont Assessment Manual shall be regulated in a manner similar to a floodway as described in Article Six, Sections 602 of these Regulations. Additional Development Standards for Zone A Approximate Alluvial Fan Floodway Administrative Floodway are:

1. Only major engineering measures as outlined in the Piedmont Manual may be used to mitigate the Alluvial Fan flood hazard in these areas.
2. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 614. Zone A Alluvial Fan

(Applicable to Article Five, Section 507 Allowable Development)

Development within an Alluvial Fan Zone A as determined using the Piedmont Assessment Manual Development may require an engineered plan.

Development shall meet Section 601 Development Standards. Additional Standards for Zone A Alluvial Fan are:

1. The Regulatory Flood Elevation is two (2) feet above Base Flood Elevation.
2. For Elevation Certificate purposes, the adjacent grade is natural grade unless a datum Base Flood Elevation is determined; then the adjacent grade is finished grade.
3. When development plans propose structures located in the proximity of a wash or with an area of significant sheet flow depth, the applicant shall submit a Plan of Development prepared by an Arizona Registered Engineer. The plan shall include engineering analysis to mitigate all hazards associated with alluvial fan flooding including inundation, ground erosion, scour around structures, aggradation and degradation. The plan shall also include building pad and lowest floor elevations. The plan shall be consistent with ADWR State Standards.
4. Development requirements in these areas shall include:
 - a. Detailed site topography;
 - b. Identification of lowest floor elevations in relation to flood elevation/depth;
 - c. Identification of all washes through the site including ingress and egress locations;

- d. Identification of provisions to maintain all natural and improved drainage or flood conveyance systems with minimal disruption of the water/sediment system;
 - e. Fill pads that may be impacted by runoff shall be protected against scour and erosion.
5. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

Section 615. Development Standards within Other Flood Hazard Areas

(Applicable to Article Five, Section 508 Allowable Development)

- 1. Standards adopted for development contained in a Watercourse Master Plan, Area Drainage Master Plan or other hydrologically or hydraulically oriented master plan shall be consistent with sound floodplain management practices and these Regulations.
- 2. The applicant for any proposed development may be required to provide against encroachment into or protection from the delineated flood hazard.
- 3. The placement of fill material or extraction of materials may require the Floodplain Administrator's approval of plans prepared by an Arizona Registered Professional Engineer.
- 4. The standards, provisions, criteria and requirements for development in Flood Hazard Zones imposed by an authorized master plan shall meet or exceed the requirements of these Regulations.
- 5. In areas where floodways have not been defined using traditional equal conveyance encroachment methods, the Floodplain Administrator may require that the Regulatory Flood Elevation be two (2) feet above the Base Flood Elevation.
- 6. Extraction of sand and gravel and other materials operations shall meet the Development Standards of this Section if applicable.

ARTICLE SEVEN

ENFORCEMENT

Section 701. Authority

This Section authorizes and specifies the enforcement procedures and establishes the penalties and remedies available for violations to enforce the provisions of these Regulations and to implement the violation, enforcement, and penalty provisions authorized pursuant to A.R.S. §§48-3603(D), 48-3609, 48-3613, 48-3614, 48-3615, 48-3615.01, 48-3622, 48-3626.

Section 702. Violation

A. The following acts constitutes a violation of these Regulations:

1. Engaging in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing a Floodplain Use Permit from the Board of the Flood Control District. Where the watercourse is a delineated floodplain it is unlawful to engage in any development affecting the flow of waters without securing a Floodplain Use Permit from the Board of Directors of the Flood Control District.
2. Failure to abide by statute, regulation, ordinance, or rule governing floodplains.
3. Engaging in any development that is not in compliance with an active Floodplain Use Permit.
4. Damaging or interfering with a facility that is owned, operated or otherwise under the jurisdiction of the Flood Control District without written authorization from the Board of the Flood Control District.
5. It is a civil offense for any person to violate any regulations, ordinances, or rules of the Flood Control District punishable in accordance with A.R.S. §48-3615(C).

B. Violators of any provision of these Regulations shall be notified by the Floodplain Administrator, or their designee, who shall state the nature of the violation and order corrective action.

C. Failure to comply with ordered corrective action may result in submission of a declaration for denial of flood insurance for otherwise insurable structures to the Administrator of the Federal Insurance Administration pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended (codified at 42 U.S.C §4023).

Section 703. Enforcement

A. Pursuant to regulations, ordinances, rules and technical standards as adopted from time to time by the Board of the Flood Control District, the Floodplain Administrator shall:

1. Conduct inspections to determine if violations of its regulations, ordinances, rules or permit conditions exist.

-
- a. The Floodplain Administrator and its agents may have reasonable access for inspection pursuant to written authorization under A.R.S. §48-3609(K) or the terms of a Floodplain Use Permit. If no written authorization has been issued, the Floodplain Administrator may inspect during regular business hours, or in the case of emergency, at any time.
 - b. If the Floodplain Administrator and its agents are denied reasonable access for inspection, the Chief Engineer of the District may apply for an administrative search warrant to be served by a certified peace officer.
 2. If a violation of the District regulations, ordinances, rules, or permit conditions (referenced as stipulations as part of the permit) is found, the Floodplain Administrator will serve upon the property owner or permit holder a Notice of Violation.
- B.** Pursuant to A.R.S. §48-3615.01, if the violation is not resolved by the deadline in the Notice of Violation, the Floodplain Administrator may set the matter for an administrative hearing before a Hearing Officer and serve notice of the hearing date, time, and place to the property owner or permit holder. The Floodplain Administrator may seek to enforce these Regulations in a court with applicable jurisdiction.

Section 704. Service of Notice of Violation

- A.** If a District representative determines that a violation is occurring on the privately owned real property under the jurisdiction of the District, that representative shall serve, or cause to be served, a Notice of Violation to the real property owner and separately on the alleged violator. If a District representative determines that a District facility has been damaged or is being interfered with, that representative shall serve, or cause to be served, a Notice of Violation to the alleged violator. For the purposes of this section, service shall be deemed complete upon:
1. Personal service to the recipient; or
 2. Receipt of the return receipt when mailing a Notice of Violation to the recipient, postage pre-paid, by certified mail, return receipt requested; or
 3. Expiration of ten (10) business days after the date of posting the Notice of Violation on the property.
- B.** Where the recipient is the owner of the real property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the county. Where the recipient is a corporate or other entity, the address for the notice shall be the address of the statutory agent, or if none, the address from the most recent records of the Corporation Commission or Secretary of State. Service by posting of the Notice of Violation may only be used where the owner, operator, or alleged violator cannot be located after reasonable efforts by the Floodplain Administrator.

Section 705. Response to the Notice of Violation

- A.** Upon receipt of a Notice of Violation a person may:
1. Admit the allegations by mailing or delivering to the Floodplain Administrator the form accompanying the Notice of Violation indicating in writing the admission to the allegations. This admission shall include an agreement to acquire any permits as necessary, an agreement to remedy the violation in the manner requested by the Floodplain Administrator, or an agreement to remedy the damage or interference in accordance with terms determined by the Floodplain Administrator; or
 2. Deny the allegations by mailing or delivering to the Floodplain Administrator a form accompanying the Notice of Violation indicating in writing and signed by the owner or alleged violator a request for a hearing.
 3. At the same time and with the same form and if the form contains the request by the person for a stay, the Chief Engineer shall issue a stay of any cease and desist order unless there is a threat to the public health or safety or to another person's property rights.
- B.** If after ten (10) business days from the date and time indicated in the Notice of Violation no response is received or appearance made by anyone on behalf of the owner or alleged violator then the District will construe the non-response as a request for a hearing and set a date pursuant to Section 706.

Section 706. Hearing Request

1. A request for a hearing shall be forwarded to a Hearing Officer who shall be appointed by the Flood Control District Board of Directors.
2. The Hearing Officer, or their designee, shall set a date, time and place for a hearing. The Hearing Officer, or their designee, shall cause notice of the hearing to be served on the owner or alleged violator and the Floodplain Administrator in accordance with this Section.
3. Notice of the hearing and a copy of the Notice of Violation shall be served on the owner or alleged violator by personal service at least ten (10) business days before the hearing, or alternatively, if the Hearing Officer is unable to personally serve the notice, the notice may be served by depositing the notice of hearing and a copy of the Notice of Violation in the post office, postage prepaid, addressed to the individual or entity to be served by any form of mail requiring a signed and returned receipt at least thirty (30) days before the hearing.
 - a. Personal service shall be completed by delivering a copy of the hearing notice and the notice of violation as follows:
 - 1) To that individual personally; or
 - 2) By leaving copies thereof at that individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein.
 - b. If the real property owner or alleged violator are corporate or other entities, service shall be completed by delivering a copy of the hearing notice and Notice of Violation to the

entity's statutory agent or, if none, to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service or process at the entity's most recent address as reflected in the records of the Corporation Commission or Secretary of State.

Section 707. Hearing Procedures

Any hearing held pursuant to this section shall be open to the public. Proceedings shall be audio recorded. A record of the proceedings may be made by a court reporter at the owner or alleged violator's expense if they so request.

A. Parties

1. The owner or alleged violator and the District representative must appear before the Hearing Officer on the date, time and place designated for adjudication of the alleged violation.
2. An owner or alleged violator may be represented by an attorney or other designated representative. The District may be represented by the county attorney or by other counsel for the District, or by a non-counsel representative if the alleged violator is appearing without counsel.
3. If a party desires to be represented by counsel or a designated representative at the hearing, that party must provide written notice of such representation to the Hearing Officer and opposing party a minimum of 24 hours before the scheduled date and time of the hearing. Representation by counsel may not be permitted at the hearing unless proof of notification is produced at the hearing.

B. Discovery

1. Pre-hearing discovery shall not be permitted (i.e., no depositions, interrogatories, etc., will be allowed prior to the actual public hearing).
2. Immediately prior to the public hearing, both parties shall produce for inspection by the opposing party any prepared exhibits and written, taped or recorded statements of any witness which may be offered at the public hearing. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

C. Rules of Procedure

1. The Arizona Rules of Evidence shall not apply. Admission of evidence is subject to the discretion and decision of the Hearing Officer. Admissible evidence shall be relevant and material. This is not to be construed as abrogating any statutory provision relating to privileged communications.
2. If the alleged violator does not appear at the date and time specified in the notice of hearing, the Hearing Officer may continue the case in the interest of justice, or may find the alleged violator in default, thereby finding the existence of all relevant facts set forth in the notice of violation, find for the District and submit their findings, determination and recommendation to the Chief Engineer within thirty (30) calendar days of the hearing.

3. If the District representative does not appear at the date and time specified in the notice of hearing, the Hearing Officer may continue the case in the interest of justice, or may find the District in default, thereby admitting that no violation exists, and submit their findings, determination and recommendation to the Chief Engineer within thirty (30) calendar days of the hearing.
4. Decisions of the Hearing Officer, the Chief Engineer or the Board of Hearing Review shall be available to any party to the hearing.

D. Conduct of the Hearing

1. The Hearing Officer shall call the case and briefly describe the procedures to be followed. The Hearing Officer may question any or all witnesses or parties to the action. No person may be examined at a hearing except by the Hearing Officer, the defendant or their attorney or designated representative, and the District representative or the county attorney or by other counsel for the District.
2. The Hearing Officer shall administer oaths and all testimony shall be given under oath or affirmation.
3. All witnesses for the District's case-in-chief, other than the owner or alleged violator, shall be required to testify prior to the owner or alleged violator being required to testify or to produce evidence. However, a witness not called in the District's case-in-chief may be called in rebuttal to testify to an issue raised by the owner or alleged violator.
4. The parties shall stipulate to all facts not in dispute.
5. The order of proceedings shall be as follows:
 - a. Testimony of District's witnesses
 - b. Testimony of owner or alleged violator's witnesses
 - c. Testimony of District's rebuttal witnesses, if any
 - d. Testimony of owner or alleged violator's rebuttal witnesses, if any
 - e. Argument of parties or their counsel or designated representatives
6. At the discretion of the Hearing Officer, cross-examination shall be limited to matters relevant to witnesses' testimony or direct examination.

E. Decision and Order

1. The Hearing Officer shall submit written findings and recommendations for the appropriate measures to be taken to abate or ameliorate any harm or damage arising from the violation and the imposition of any civil penalties to the Chief Engineer and the owner or alleged violator within thirty (30) calendar days after the date of the hearing.
2. The Chief Engineer shall issue a final decision and order. The final decision shall be in the form of findings of fact and conclusions why those facts constitute violations of statutes, regulations, ordinances or rules. The final order shall be in the form of measures required to abate or ameliorate any harm or damage resulting from the violation, requirements for permits and the imposition of civil penalties. The final decision and order shall be served on the parties to this action, in accordance with Sections 706.3.a and 706.3.b and is effective upon service.

F. Right to Appeal

1. Either party to a final decision and order of the Chief Engineer may request a review of the final decision and order by the Board of Hearing Review. A request for review shall be delivered to the Clerk of the Board of Directors within fifteen (15) calendar days after the effective date of the final decision and order.
2. The final decision of the Board of Hearing Review is subject to judicial review pursuant to A.R.S. Title 12, Article 6. Any decision not appealed in a timely fashion becomes the final enforceable order of the Floodplain Administrator.

Section 708. Penalties

- A. It is a Class 2 Misdemeanor to engage in any Development or to divert, retard or obstruct the flow of waters in a watercourse without first securing the written authorization of the District. A violator may be subject to jail and fines.
- B. The penalty for the civil offense of violation of Flood Control District regulations, ordinances or rules is a fine not in excess of that which is chargeable for a Class 2 Misdemeanor. Each day the violation continues constitutes a separate offense.
- C. All development located or maintained within any Special Flood Hazard Area since August 8, 1973, in violation of flood control statutes or regulations without authorization from the Floodplain Administrator is a public nuisance per se and may be abated, prevented or restrained by action of this political subdivision.
- D. Nothing in this section precludes any private right of action by any person damaged by another's unauthorized diversion, retardation or obstruction of a watercourse. Further the District is not precluded by anything in these Regulations from pursuing injunctive and other remedies as provided by law.

Section 709. Abatement

- A. If the violation has not been resolved to the satisfaction of the Chief Engineer after all steps have been exhausted of Article Seven of these Regulations the following may be done to abate the unresolved violation:
 1. Within thirty (30) calendar days of confirmation of an unresolved violation of these Regulations, the Chief Engineer may either authorize the abatement of the violation at District cost or apply to the Superior Court or any court with appropriate jurisdiction for a temporary restraining order or preliminary or permanent injunction. Any complaint filed shall include all information available to the Chief Engineer which is pertinent to said violation and request the following relief:
 - a. For an order allowing the Chief Engineer to take any necessary action to effect the abatement of such violation and to recoup any costs and expenses of taking such action from the owner. The order may, among other things, direct the owner of the property upon which the violation exists to provide whatever additional information and access may be required for the Chief Engineer's action to abate the violation and to provide such information and access within a reasonable time; or

(This page intentionally left blank)

REVISIONS

Revisions to these Regulations will be required from time to time due to ongoing regulatory and technical changes, revisions or additions to state statutes, and other federal and state requirements. Such revisions will take place in accordance with the procedures outlined in state statutes.

A Floodplain Regulation for Maricopa County has been in force since February 25, 1974. The version that these Regulations supersede are the Floodplain Regulations for Maricopa County, Arizona that were adopted on August 4, 1986; and subsequently amended

March 23, 1987;

April 6, 1988;

September 18, 1989;

September 3, 1991;

December 15, 1993;

November 1, 2000;

December 20, 2006;

November 30, 2011;

April 4, 2014, Text Amendment FCD 2013-001;

June 25, 2014, Text Amendment FCD 2014-001; and

Latest date January 17, 2018

(This page intentionally left blank)

APPENDICES

(This page intentionally left blank)



APPENDIX A - FEE SCHEDULE

Floodplain Regulations for Maricopa County, Arizona

Effective January 17, 2018

The following administrative fees shall be charged for the processing of Appeals, Floodplain Use Permits, Floodplain Variances, plan review and map changes with no provision for refund, unless an error occurred or other state statutes apply:

<u>FLOODPLAIN USE PERMITS</u>	FEES *	
	Community	Unincorporated County
Complexity 1 – Minor, non-complex residential property development	\$250	\$350
Complexity 2 – Single family residential, mobile/manufactured building, commercial/industrial development	\$465	\$600
Complexity 3 – Residential subdivision, commercial/industrial center, other complex residential or commercial development	\$635	\$800
Clearance Review – Incidental Use	\$100	\$100
Clearance Review – No Development Activity in Floodplain	\$50	\$50
Clearance Review – Perimeter Floodplain and Exemptions	\$0	\$0
Permit Amendment or Modification – Fee shall be equal to permit fee and not to exceed \$150		
Post Construction Fee – Associated with Floodplain Inquiry Case	\$150 plus Complexity 1, 2, or 3	
<u>FLOODPLAIN USE PERMITS – FOR SAND AND GRAVEL</u>	FEE	
New Permit Application	\$ 7,800	
Non-Compliance Engineering Review	\$ 1,600	
Permit Renewal Application	\$ 1,400	
Permit Amendment Application – Complexity A	\$ 7,440	
Permit Amendment Application – Complexity B	\$ 3,700	
Permit Amendment Application – Complexity C	\$ 800	
Permit Amendment Application – Administrative	\$50	
Annual Inspection Fee	\$ 1,000	
<u>VARIANCE</u> (Floodplain Administrator, Floodplain Review Board, or Board of Directors)	FEE	
Residential/Commercial/Industrial (posting required)	\$ 2,600	
Continuance of Hearing – Applicants request	\$ 50	
New Posting Required	\$ 170	
<u>FLOODPLAIN DELINEATION REVIEW</u>	FEE	
CLOMR/LOMR (MT1)	\$ 880	
CLOMR/LOMR (MT2)	\$ 3,000	
Review of Floodplain Study	\$ 1,500	
<u>APPEALS</u>	FEE	
Appeals, Interpretations	\$250	

Note: Fees shall not be charged by the Floodplain Administrator to any government entities (federal, state, county, or municipal) for services provided by the District.

* Fees for unincorporated county include inspections. Inspections by District staff are not performed for communities unless requested by the community, and in those cases the applicant would be charged the unincorporated county fee.



FEE SCHEDULE NOTES

Floodplain Use Permit Fee Categories

Complexity 1 – Fee category to be applied for the review and issuance of residential Floodplain Use Permits for development that lacks structural or design complexity. Development in the floodplain in this category are minor in their potential impact on the floodplain. There is no floodway on the parcel. (Examples: pools, patios, non-solid fences (i.e.: mesh, chain link, barb wire), driveways at natural grade, etc.)

Complexity 2 – Fee category to be applied for the review and issuance of a residential, commercial, or industrial Floodplain Use Permit that requires greater review. This includes development related to single-family residential, mobile/manufactured building, or commercial/industrial use, or any other development of the floodplain that, based on professional judgment, has the potential to result in a more significant impact on the floodplain than Complexity 1. (Examples: single-family residential structures, manufactured homes, mobile homes, solid walls, retaining walls, at grade roads in floodway, accessory buildings, culverts, as-built structures, etc.)

Complexity 3 – Fee category to be applied for the review and issuance of residential, commercial, or industrial Floodplain Use Permit that requires more detailed review due to the level of complexity. This includes residential subdivisions, commercial/industrial malls or parks, or any other development that, based on professional judgment, has the potential to result in a more significant impact on the floodplain as compared to Complexity 1 and Complexity 2. (Examples: subdivisions, commercial business parks, strip malls, roadways, industrial utility projects, multi-family complexes, mobile/manufactured home parks, recreational vehicle parks, any obstruction or fill in the floodway, commercial solar energy production sites, etc.)

Clearance Review - Incidental – Fee category to be applied for the review and processing of an incidental use as approved by the Floodplain Administrator or his designee per signed policy. Development is to have very minimal ground disturbance. (Incidental uses include: awnings, benches, billboards, carports, corrals, demolitions, open rail fences without mesh including barb wire, fire pits, interior courtyard fences less than or equal to 50 lineal feet, light poles, non-substantial improvement additions [interior remodel/repair, vertical additions], patio covers, solar panels on roofs, portable pens and stalls, ramadas, shade structures [nonsolid sides], sheds/enclosures less than or equal to 120 square feet with no utilities, signs [i.e., free standing, building attachments], tenant improvement, wheelchair ramps, and wrought-iron pool barriers.)

Clearance Review - No Development Activity in Floodplain – Fee category to be applied for the review and processing of project improvements conducted within a property that contains a designated floodplain, where review by the Floodplain Administrator has determined that development in the floodplain will not occur.



Clearance Review – Perimeter Floodplain and Exemptions – Fee category to be applied for the review and processing of project improvements conducted within a property that contains a minimal amount of floodplain, generally on the perimeter of the property, that due to the location, amount, and distance from any proposed improvement, does not require review by the Floodplain Administrator to determine its impact on the floodplain. Review and determination of such activities is conducted on an administrative level by District staff.

Permit Amendment or Modification – Fee category to be applied for processing changes to an existing permit, where the reason for the request was initiated by the applicant and the permit fee has already been paid in full. Request may include administrative revisions to paperwork due to new ownership, additional development on property not part of original permit, in-construction changes such as increasing storage tank size or location above or below ground, etc. Modifications are permit changes to plans after the permit has been issued.

Post-Construction Permit Fee (associated with Floodplain Inquiry Case) – Additional fee to be applied for the processing and review of a Floodplain Use Permit category (Complexity 1, 2 or 3) where the applicant has begun or completed construction prior to obtaining the required permit. The fee shall be applied in addition to the standard permitting fee(s). Fee is applicable when there is an open Floodplain Inquiry on the property that has not progressed to a hearing before the Hearing Officer.

Floodplain Use Permit for Sand and Gravel – Fee Categories

New Permit Application – Fee category for the processing and review of an application for a new permit.

Noncompliance Engineering Review – Fee category for the engineering review of a facility as the result of an identified non-compliance issue.

Permit Renewal Application – Fee category for the processing and review of an application to renew a permit that is pending expiration.

Permit Amendment Application Complexity A – Fee category for the processing and review of an application to amend a permit that is high in complexity and has significant potential impact on the floodplain. (Examples: Expanding permitted pits, adding newly engineered structures such as berms or grade controls, etc.).

Permit Amendment Application Complexity B – Fee category for the processing and review of an application to amend a permit that is intermediate in complexity and has moderate potential to impact the floodplain. (Examples: Resolution of significant compliance issues, significant closure plan modifications, changes in berm protection riprap, etc.).

Permit Amendment Application Complexity C – Fee category for the processing and review of an application to amend a permit that is low in complexity and has low potential to impact the floodplain. (Examples: Phasing changes, resolution of minor compliance issues, minor closure plan modifications, site plan revisions, etc.).



Permit Amendment Application Administrative – Fee category for the processing and review of an application to amend a permit that is administrative in nature and that is not occurring as part of a Complexity A, B, or C amendment application. (Examples: Change in property ownership, changes to Assessor parcel numbers, transfer of permit, etc.).

Annual Inspection Fee – Fee for conducting all inspections over a one year period.

Variance Fee Categories

(Floodplain Administrator, Flood Control Review Board, or Board of Directors)

Residential/Commercial/Industrial (posting required) – Fee category to be applied for the issuance of a Variance by the Floodplain Administrator, Floodplain Review Board, or affirmed by the Board of Directors.

Continuance of Hearing – Applicants Request – Fee category to be applied in the event that an applicant initiates a request of continuance for a scheduled hearing.

New Posting Fee – Fee category to be applicable for the reposting of a notice of Variance.

Appeals Fee Category

Fee category to be applied when an applicant requests an interpretation from these Regulations, wants to appeal a denied permit application, or appeal a final decision of the Floodplain Administrator based on the results of an inspection.

Floodplain Delineation Review Fee Categories

CLOMR/LOMR (MT1) – Fee category to be applied for the technical review of a conditional letter of map revision (CLOMR) and/or letter of map revision (LOMR) submittal to the Federal Emergency Management Agency (FEMA). The fee is applied for projects that meet the technical criteria for MT-1 submittals to FEMA where the revisions requested are primarily due to modifications to the drainage characteristics as the result of fill being placed.

CLOMR/LOMR (MT2) – Fee category to be applied for the technical review of a CLOMR/LOMR submittal to FEMA. The fee is applied for projects that meet the technical criteria for MT-2 submittals to FEMA where the revisions requested are primarily due to complex modifications to the drainage characteristics that involve the alteration of drainage flows, patterns, rates, velocities, and other dynamic factors.

Review of Floodplain Study – Fee category to be applied for the technical review and consideration of an independent third-party floodplain study. This fee may be applied when the District staff performs a review of a study conducted by an outside entity in support of a permit application or other regulatory requirement.

APPENDIX B – Communities Dependent on the District

Listed below are the dates of the original firms, FIRMS, FBFM and FIS studies for the communities for which the Flood Control District of Maricopa County performs floodplain management:

COMMUNITY	ORIGINAL FIS & MAP DATES
Maricopa County Unincorporated Areas	July 2, 1979
City of Buckeye	February 15, 1980
Town of Carefree	July 2, 1979
Town of Cave Creek	September 29, 1989
City of Chandler	July 16, 1980
City of El Mirage	December 1, 1978
Town of Gila Bend	December 4, 1979
Town of Guadalupe	April 15, 1988
City of Litchfield Park	September 29, 1989
City of Mesa	May 15, 1980
Town of Queen Creek	September 4, 1991
City of Surprise	January 15, 1978
City of Tolleson	January 16, 1980
Town of Wickenburg	January 5, 1978
Town of Youngtown	November 15, 1978

(This page intentionally left blank)

APPENDIX C – LICENSING TIME FRAMES

PURPOSE:

Pursuant to A.R.S. §48-3645, the District establishes overall licensing time frames during which the District will either grant or deny each type of license (permit) that it issues. The overall time frame for each type of license states separately the District’s time frame for the administrative completeness review time frame and the substantive review time frame.

The District must take into account the partnerships with the communities that have elected not to assume their own floodplain management and participation in the Maricopa County One Stop Shop when establishing overall time frames. These time frames may be subject to modification in accordance with state statutes. Time frames include the District’s review time and not the time the applicant takes responding to notice of deficiencies for either administrative or substantive review.

The following time frames are provided for development located within special flood hazard areas in the Flood Control District’s area of jurisdiction in Maricopa County:

Time Frames

<u>FLOODPLAIN USE PERMITS</u>	Admin/Substantive/Overall Time (Working Days)
Complexity 1 – Minor, non-complex residential property development	30/60/90
Complexity 2 – Single family residential, mobile/manufactured building, commercial/industrial development	30/60/90
Complexity 3 – Residential subdivision, commercial/industrial center, other complex residential or commercial development	30/60/90
Clearance Review – Incidental Use	30/60/90
Clearance Review – No Development Activity in Floodplain	30/60/90
Clearance Review – Perimeter Floodplain and Exemptions	30/60/90
Permit Amendment	30/60/90
<u>FLOODPLAIN USE PERMITS – FOR SAND AND GRAVEL</u>	
New Permit Application	30/60/90
Non-Compliance Engineering Review	N/A
Permit Renewal Application	30/0/30 *
Permit Amendment Application – Complexity A	30/60/90
Permit Amendment Application – Complexity B	30/60/90
Permit Amendment Application – Complexity C	30/60/90
Permit Amendment Application - Administrative	N/A
<u>VARIANCE</u> (Floodplain Administrator, Floodplain Review Board, or Board of Directors)	
Residential/Commercial/Industrial (posting required)	30/60/90
<u>FLOODPLAIN DELINEATION REVIEW</u>	
CLOMR/LOMR (MT1)	30/60/90
CLOMR/LOMR (MT2)	30/60/90

* Provided that development has been done in accordance with the approved Plan of Development, otherwise a substantive review timeframe of sixty (60) working days is applicable for an overall timeframe of ninety (90) working days.

4-Procedures

REVIEW BOARD PROCEDURES

October 24, 1984

POWERS AND DUTIES

Pursuant to Arizona Revised Statutes Sections 45-2351 and 45-2352 and Board of Directors Resolution No. FCD 84-7, the Floodplain Review Board shall have the following duties and functions:

1. Interpret upon appeal the meaning of any word, phrase or section in the Floodplain Regulation which is the subject of dispute between the Floodplain Administrator and the appellant.
2. Decide upon appeal the location of a floodway or floodplain boundary which is the subject of dispute between the Floodplain Administrator and the appellant.
3. Allow upon application a variance from the terms of the Floodplain Regulation if it determines that by reason of any peculiar physical characteristics of the specific property, strict application of the Regulation would result in unnecessary hardship upon the applicant and granting the variance would not substantially impair the purpose and intent of the Regulation.

APPLICATIONS FOR VARIANCE OR APPEAL FROM DECISION OF FLOODPLAIN ADMINISTRATOR

1. Applications for variance to the Regulation or appeals shall be made on forms prescribed by the Board of Review and shall be filed with the Floodplain Administrator. An appeal shall be filed within 30 days of issuance of notice of the action which is the subject of appeal.

Such applications or appeals shall be accompanied by:

- a) An accurate plot plan and description of the property involved, description of the proposed use and finished floor elevations and estimate of the value of the use.
 - b) For appeals, the specific grounds upon which the appeal is made.
2. Except for appeal for interpretation of the Regulation, the property involved in each application for variance or appeal shall be posted as to the time, date and location of the hearing.
 3. The Review Board shall fix a time for hearing and give a minimum of fifteen (15) days notice thereof to the parties in interest and to the public by posting of the property and publication of the meeting agenda.
 4. At least five (5) days prior to hearing, applicant or appellant shall be mailed a copy of the agenda and staff report to be presented at hearing.

Meetings of the Review Board shall be held in conjunction with scheduled meetings of the Flood Control Advisory Board, or at such other times as deemed necessary for the transaction of business. Variance applications and appeals to be heard will be incorporated into the regular meeting agenda and be heard in accordance with the Bylaws of the Flood Control Advisory Board. The monthly meeting shall be the fourth Wednesday of each month unless otherwise called and noticed.

All such meetings shall comply with the requirements of the open meeting law, ARS 38-431 et. seq. The Review Board shall keep minutes of its proceedings showing the vote indicated upon each motion. A copy of the minutes shall be filed with the Floodplain Administrator and shall be a public record.

The Floodplain Administrator shall transmit to the Review Board all papers and documents constituting the record upon which the appealed action was taken. Such appeal shall stay all proceedings in the matter appealed unless the Floodplain Administrator certified to the Review Board that, by reason of the facts stated in the certification, the stay would in his opinion cause imminent peril to life or property.

Staff recommendations shall be prepared and distributed to Board members at least 5 days prior to the scheduled hearing.

The procedure to be followed in each case on the agenda shall be as follows:

1. The Chairman shall call the case in the order appearing on the agenda.
2. Staff shall present a narrative report including any relevant maps, data, history or other information and shall conclude its report by making a recommendation to the Board.
3. The applicant or appellant, or his representative shall be allowed to make a presentation or statement.
4. Other persons who wish to speak in support of the application or appeal shall be allowed to present any new or additional relevant information.
5. Persons who wish to speak in opposition to the application or appeal shall be allowed to present any new or additional relevant information.
6. The applicant or appellant shall be allowed to respond to points raised.
7. The Chairman shall ask for additional comments from staff, or additional questions from members of the Board. Questions may be directed by the Chairman from any members of the Board to any person speaking on the case, at any time during the hearing on the case.
8. The Chairman shall call for a motion and a second. The members of the Board shall vote on the motion, except that any member who has a conflict of interest in the case shall excuse himself from sitting on the case upon becoming aware of the conflict of interest. A majority vote of the quorum shall be required to pass a motion. If a motion

fails to pass, a substitute motion shall be made which shall also require a majority vote of the quorum to pass. If an action is protested by more than 50% of the property owners within 500 feet of the property in question or by any municipal corporation within one mile of a property, the action shall not pass unless at least five members of the Board vote to approve.

9. The Review Board may attach to its actions such stipulations or conditions as may be necessary to carry out the intent of the Floodplain Regulation.
10. If an applicant or appellant or his representative is not present when his case is called the Chairman may entertain a motion to continue the case or dismiss the case for failure to pursue the application or appeal. Alternatively, the Board may proceed to conduct the hearing and decide the case if it appears that sufficient information is contained in the application and staff report and from any persons testifying at the hearing, to decide the case on its merits. If the board determines to hear and decide the case in absentia, it shall make a finding on the record that it has sufficient information before it to enable it to decide the case on its merits. If the Board moves to dismiss the case for failure of the applicant or appellant to appear, the application or appeal may be refiled only upon payment of another filing fee.

Any person, agency, firm, corporation, partnership, association, municipality, state agency or any officer thereof aggrieved in any manner by an action of the Board of Review may within 30 days appeal to the District Board of Directors. Any such person aggrieved in any manner by an action of the Board of Directors may within 30 days appeal to the Superior Court of the State of Arizona.

The County Attorney shall serve in an advisory capacity to the Review Board.

APPROVED:



Chairman, Board of Directors
Flood Control District of
Maricopa County

ATTEST:



Clerk of the Board

Date: DEC 3 1984

REVIEW BOARD PROCEDURES

October 24, 1984

Revised November 27, 1985

POWERS AND DUTIES

Pursuant to Arizona Revised Statutes Sections 48-3611 and 48-3612 and Board of Directors Resolution No. FCD 84-7, the Floodplain Review Board shall have the following duties and functions:

1. Interpret upon appeal the meaning of any word, phrase or section in the Floodplain Regulation which is the subject of dispute between the Floodplain Administrator and the appellant.
2. Decide upon appeal the location of a floodway or floodplain boundary which is the subject of dispute between the Floodplain Administrator and the appellant.
3. Allow upon application a variance from the terms of the Floodplain Regulation if it determines that by reason of any peculiar physical characteristics of the specific property, strict application of the Regulation would result in unnecessary hardship upon the applicant and granting the variance would not substantially impair the purpose and intent of the Regulation.

APPLICATIONS FOR VARIANCE OR APPEAL FROM DECISION OF FLOODPLAIN ADMINISTRATOR

1. Applications for variance to the Regulation or appeals shall be made on forms prescribed by the Board of Review and shall be filed with the Floodplain Administrator. An appeal shall be filed within 30 days of issuance of notice of the action which is the subject of appeal.

Such applications or appeals shall be accompanied by:

- a) An accurate plot plan and description of the property involved, description of the proposed use and finished floor elevations and estimate of the value of the use.
 - b) For appeals, the specific grounds upon which the appeal is made.
2. Except for appeal for interpretation of the Regulation, the property involved in each application for variance or appeal shall be posted as to the time, date and location of the hearing.
 3. The Review Board shall fix a time for hearing and give a minimum of fifteen (15) days notice thereof to the parties in interest and to the public by posting of the property and publication of the meeting agenda.
 4. At least five (5) days prior to hearing, applicant or appellant shall be mailed a copy of the agenda and staff report to be presented at hearing.

Meetings of the Review Board shall be held in conjunction with scheduled meetings of the Flood Control Advisory Board, or at such other times as deemed necessary for the transaction of business. Variance applications and appeals to be heard will be incorporated into the regular meeting agenda and be heard in accordance with the Bylaws of the Flood Control Advisory Board. The monthly meeting shall be the fourth Wednesday of each month unless otherwise called and noticed.

All such meetings shall comply with the requirements of the open meeting law, ARS 38-431 et. seq. The Review Board shall keep minutes of its proceedings showing the vote indicated upon each motion. A copy of the minutes shall be filed with the Floodplain Administrator and shall be a public record.

The Floodplain Administrator shall transmit to the Review Board all papers and documents constituting the record upon which the appealed action was taken. Such appeal shall stay all proceedings in the matter appealed unless the Floodplain Administrator certified to the Review Board that, by reason of the facts stated in the certification, the stay would in his opinion cause imminent peril to life or property.

Staff recommendations shall be prepared and distributed to Board members at least 5 days prior to the scheduled hearing.

The procedure to be followed in each case on the agenda shall be as follows:

1. The Chairman shall call the case in the order appearing on the agenda.
2. Staff shall present a narrative report including any relevant maps, data, history or other information and shall conclude its report by making a recommendation to the Board.
3. The applicant or appellant, or his representative shall be allowed to make a presentation or statement.
4. Other persons who wish to speak in support of the application or appeal shall be allowed to present any new or additional relevant information.
5. Persons who wish to speak in opposition to the application or appeal shall be allowed to present any new or additional relevant information.
6. The applicant or appellant shall be allowed to respond to points raised.
7. The Chairman shall ask for additional comments from staff, or additional questions from members of the Board. Questions may be directed by the Chairman from any members of the Board to any person speaking on the case, at any time during the hearing of the case.
8. The Chairman shall call for a motion and a second. The members of the Board shall vote on the motion, except that any member who has a conflict of interest in the case shall excuse himself from sitting on the case upon becoming aware of the conflict of interest. A majority vote of the quorum shall be required to pass a motion. If a motion fails to pass, a substitute motion shall be made which shall also require a majority vote of the quorum to pass. If an action is protested by more than 50% of the property owners

within 500 feet of the property in question or by any municipal corporation within one mile of a property, the action shall not pass unless at least five members of the Board vote to approve.

9. The Review Board may attach to its actions such stipulations or conditions as may be necessary to carry out the intent of the Floodplain Regulation. If the Floodplain Board of Review has cause to believe, after approval of a variance, that any stipulations or conditions may have been violated, it may set a hearing for the purpose of determining whether to revoke the variance for such violation. Notice of the revocation hearing shall be as set forth above for other hearings. The Floodplain Board of Review may revoke the variance stating on the record the specific basis for finding a violation of the stipulations or conditions or it may grant a limited period of time within which to correct the violation in order to avoid revocation of the variance.

10. If an applicant or appellant or his representative is not present when his case is called the Chairman may entertain a motion to continue the case or dismiss the case for failure to pursue the application or appeal. Alternatively, the Board may proceed to conduct the hearing and decide the case if it appears that sufficient information is contained in the application and staff report and from any persons testifying at the hearing, to decide the case on its merits. If the Board determines to hear and decide the case in absentia, it shall make a finding on the record that it has sufficient information before it to enable it to decide the case on its merits. If the Board moves to dismiss the case for failure of the applicant or appellant to appear, the application or appeal may be refiled only upon payment of another filing fee.

Any person, agency, firm, corporation, partnership, association, municipality, state agency or any officer thereof aggrieved in any manner by an action of the Board of Review may within 30 days appeal to the District Board of Directors. Any such person aggrieved in any manner by an action of the Board of Directors may within 30 days appeal to the Superior Court of the State of Arizona.

The County Attorney shall serve in an advisory capacity to the Review Board.

Flood Control District of Maricopa County
Floodplain Review Board
2801 W. Durango Street
Phoenix AZ 85009

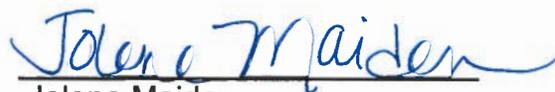
**STATEMENT OF LOCATIONS WHERE ALL NOTICES OF THE MEETINGS
OF THE FLOOD CONTROL DISTRICT FLOODPLAIN REVIEW BOARD WILL BE
POSTED**

Pursuant to A.R.S. §38-431.02, the Flood Control District of Maricopa County Floodplain Review Board hereby states that all notices of meetings of the Flood Control District of Maricopa County Floodplain Review Board and any of its committees and subcommittees will be posted on the Flood Control District Public Web Site (calendar), as well as on the public notice bulletin board within the Flood Control District office located at 2801 W Durango St, Phoenix, AZ 85009. Flood Control District office is open to the public Monday through Friday from 8:00 a.m. to 5:00 p.m. except legal holidays. Such notices will indicate the date, time, and place of the meeting and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting.

Dated this 13th day of May, 2016.

FCDMC Floodplain Review Board

By



Jolene Maiden,
Clerk, Floodplain Review Board

**6-FEMA-NFIP
Variances**



Floodplain Management Bulletin

Variations and the National Flood Insurance Program

FEMA P-993 / July 2014



FEMA

Floodplain Management Bulletin

Variations and the National Flood Insurance Program

FEMA P-993 / July 2014



FEMA

Table of Contents

Section 1. Purpose and Background	1
1.1 Purpose.....	1
1.2 Background and Meaning of Variance	1
Section 2. Evaluating the General Merits of a Floodplain Management Variance	3
2.1 Floodplain Regulations versus Zoning Regulations	3
2.2 Evaluating a Floodplain Management Variance	4
Section 3. Floodplain Management Variance Review Process	6
3.1 Types of Variances	6
3.2 NFIP Variance Standards.....	7
3.3 NFIP Variance Regulations.....	9
3.3.1 Floodways.....	9
3.3.2 Lots of One-Half Acre or Less	11
3.3.3 Good and Sufficient Cause	12
3.3.4 Exceptional Hardship.....	13
3.3.5 Increased Flood Heights	14
3.3.6 Public Safety and Nuisances.....	14
3.3.7 Public Expense	15
3.3.8 Fraud and Victimization.....	15
3.3.9 Existing Local Laws or Ordinances.....	16
3.3.10 Minimum Necessary to Afford Relief	17
3.3.11 Disclosure	18
3.3.12 Functionally Dependent Uses	19
3.3.13 Historic Structures.....	20
Section 4. Common Situations in which a Variance May Be Requested.....	22
4.1 Appurtenant/Accessory Structures	22
4.2 Boat Storage Facilities	23
4.3 Subdivisions.....	24
4.4 Temporary Development.....	24

4.4.1	Considerations for a Temporary Development Variance.....	24
4.4.2	Storage of Equipment and Material in Temporary Development Projects	25
Section 5. NFIP Flood Insurance Implications of Variances		27
Section 6. Additional Resources.....		30
6.1	Federal Emergency Management Agency Publications	30
6.2	Comments	31
6.3	Ordering Information.....	32

List of Figures

Figure 1:	Pre-FIRM building with lowest floor 7 feet below the BFE incurred Substantial Damage during the base flood event.	28
Figure 2:	Two examples of repairs requiring a variance to the building shown in Figure 1. Note the example actuarial rates based on \$100,000 in building coverage.	29
Figure 3:	Two examples of repairs where no variance to the building shown in Figure 1. Note the example actuarial rates based on \$100,000 in building coverage.	29

Acronyms and Abbreviations

BFE	Base Flood Elevation
CFR	Code of Federal Regulations
DOI	Department of the Interior
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
NFIP	National Flood Insurance Program
SFHA	Special Flood Hazard Area
WSEL	Water Surface Elevation

SECTION 1

Purpose and Background

The National Flood Insurance Program (NFIP) variances procedures are designed to help local governments protect their citizens and property from flood damages. Allowing variances to the local floodplain management standards may significantly increase the property's flood insurance rate and decreased the community's resilience. Therefore, by implementing the NFIP variance procedures, a community will ensure that alternative actions are taken that protect and encourage safe development in the floodplain. This publication outlines the floodplain management variance criteria as set forth in Title 44 Code of Federal Regulations (CFR) Part 60, Criteria for Land Management and Use, Subpart A – Requirements for Floodplain Management Regulations, Section 60.6 (44 CFR §60.6).

This publication is not intended to offer legal advice.

1.1 Purpose

This guidance will assist local government officials in reviewing requests for variances and determining if a request meets the minimum requirements of the NFIP. The variance regulation set forth in 44 CFR §60.6 is not absolute; State zoning enabling legislation or State floodplain management regulations and local case law¹ may take precedence and may be more restrictive. Therefore, community officials should consult their local attorney or State Attorney General regarding the specific requirements of State and local variance regulations.

1.2 Background and Meaning of Variance

A variance is an authorization for the construction or maintenance of a structure or other land uses that would otherwise be prohibited by a land use regulation such as a zoning ordinance. Local floodplain regulations may complement and be augmented by zoning regulations to reduce the community's overall risk to flooding. Relevant to this guidance, 44 CFR §59.1 defines "variance" as "a grant of relief by a community from the terms of a floodplain management regulation." Variances are meant to address unique, site-specific and individual circumstances where the strict application of the ordinance may result in an extreme hardship to a property owner. While the variance is intended to provide relief, it still enables the community to:

- Preserve the purpose and intent of the zoning law/ordinance;
- Minimize legal challenges to the zoning law or floodplain management regulations and avoid an unconstitutional "taking" of private property without compensation; and
- Protect the safety, health, and welfare of the public and emergency responders.

¹ Case law dictates following the due process of law detailed in the floodplain ordinance, enforcing regulations consistently, and acting under the advisement of the community's attorney. For more information, consult with your community's attorney.

The authority to grant a variance is typically delegated to communities through State statutes. This authority empowers a community to establish a board to adjudicate variance applications and sets out the standards and elements necessary for granting variances. The standards and elements vary from State to State. Some are strictly defined, and others are imprecise and allow the board greater discretion when granting a variance.

In some cases, a variance granted for floodplain management purposes can result in a project that does not meet the minimum standards of the NFIP. Because a variance can lead to an increased risk to life and property, variances from flood elevation requirements or other floodplain management requirements should be granted only rarely.

SECTION 2

Evaluating the General Merits of a Floodplain Management Variance

The floodplain management variance requirements are based on the general principles of zoning laws in State statutes. The minimum floodplain requirements for communities participating in the NFIP are designed to ensure the practice of sound floodplain management. (See 44 CFR §60.6.) To grant a variance from floodplain ordinances, in addition to meeting the requirements set out by State law, the community must determine:

- Good and sufficient cause and exceptional hardship exist;
- The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
- The variance is the minimum action necessary to afford relief.

If the required standards of State law, local ordinances, and 44 CFR §60.6 are closely adhered to, granting variances from floodplain ordinances should be rare. Additionally, where a variance is granted, some level of flood protection and hazard mitigation should always be required.

2.1 Floodplain Regulations versus Zoning Regulations

Floodplain regulation and zoning regulations, when applicable, are land use and development controls that should be administered in concert to promote the general welfare by minimizing the threat from natural hazards to life and property.

Floodplain regulations are similar in nature and function to zoning regulations in that both involve land use regulation and control, have benefits and performance expectations, and are often implemented under the same legislative authorities at the local or State level. However, floodplain regulations differ from zoning regulations because they specifically address human safety and property protection in relation to a known and defined natural hazard. Furthermore, in accordance with the provisions of 44 CFR Part 60, the local jurisdiction must enforce floodplain regulations for all development in the Special Flood Hazard Area (SFHA).

SPECIAL FLOOD HAZARD AREA (SFHA)

Land areas subject to a 1 percent or greater chance of flooding in any given year. These areas are indicated on Flood Insurance Rate Maps (FIRMs) as Zone AE, A1-A30, A99, AR, AO, AH, V, VO, VE, or V1-30. Mapped zones outside of the SFHA are Zone X (shaded or unshaded), B, or C.

2.2 Evaluating a Floodplain Management Variance

When evaluating a request for a variance, communities should first look to their own State law and local land use zoning and floodplain management requirements. While each State has adopted individual and often unique requirements and procedures for the issuance of variances, common examples of variance criteria include the following:

1. Hardship

- An exceptional hardship related to the property such as unique physical and topographical conditions of the property; this is not related to the individual personal circumstances of the applicant.
- The hardship related to the property was not caused by the applicant or is shared by adjacent parcels.
- A variance is required for the applicant to make reasonable use of the property.

2. Increased Risk

- Issuing the variance will not impair the adjacent properties or neighborhood.
- The variance will not be detrimental to public health, welfare, or safety.

3. Minimum Action

- The variance will deviate from the overall zoning as little as possible to afford the necessary relief.

Variance Review Boards

Typically, variance requests are reviewed by the community planning commission, a separate appeals board, or in some cases the city council. These boards will not have the authority to change the ordinance, only to impose the application or interpretation of the ordinance's provisions. Generally, the community's variance board reviews variance requests only on a structure-by-structure basis. Variance requests should not be reviewed or granted for multiple lots, phases of subdivisions, or entire subdivisions. When a review board follows and considers the intent and procedures outlined in the NFIP criteria, few situations would qualify for a floodplain management variance related to flood elevations or flood loss reduction provisions in the local ordinance.

Key Issues to Consider

A community should consider four important issues before granting a variance: (1) the community's liability, (2) the cumulative impacts on the floodplain of granting multiple similar variances, (3) the variance decision will last for the life of the structure, and (4) whether granting a variance will jeopardize the community's participation in the NFIP.

For example, variances are granted for the structure and not associated with the property owner. As such, when communities review a variance request, they should consider the life expectancy of a building. A home built today is expected to last an average of about 100 years; shopping malls with traditional parking lots have a life expectancy of about 12 to 20 years; commercial structures have a life expectancy of about 25 to 75 or more years, depending on building type. If the structure is located within a floodplain, the cumulative effects of development will increase possible flood damage to the structure.

SECTION 3

Floodplain Management Variance Review Process

To properly administer its floodplain management ordinances, including the granting of variances, a local government should establish a standardized variance review procedure. This procedure must be within the bounds of State-enabling law and in accordance with local laws and ordinances. In most cases, the variance standards in 44 CFR §60.6 are incorporated into the body of a community's floodplain management ordinance.

The NFIP variance criteria set forth at 44 CFR §60.6 must be read as a whole and not in segments. Therefore, the granting of a floodplain variance is rare.

Administrative procedures for processing and considering variance requests vary from State to State, and often from community to community. Some communities have separate procedures to hear variance requests related to zoning and building codes, while other communities have only one set of procedures. Procedurally, a variance request is usually presented to the appropriate commission (board), which then considers the request during a public meeting or hearing. During the deliberations, reports from the appropriate community official, as well as testimony from the applicant and other potentially affected or interested parties, are usually accepted orally and in writing.

3.1 Types of Variances

In general, there are two types of variances allowed by State law: use variances and area variances. The responsibility for determining that an applicant qualifies for either of these variances rests solely on the community.

A variance is the only legal means by which a community can permit construction that is inconsistent with the provisions in its floodplain management ordinance.

Use variances. Local officials permit a property owner to use a building or parcel for a purpose not normally allowed in a particular zone. An example of this would be allowing someone to establish an office in a residential zone because the property has some unique characteristic that precludes use or development as a residence, and use as an office would not be detrimental to the surrounding properties or the community as a whole.

Area variances. An area variance may be granted when, for instance, a property owner is able to show that there are serious, practical difficulties associated with complying with the dimensional requirements of the zoning ordinance, such as setback requirements or maximum height restrictions.

Floodplain Management Variances

While variances from NFIP floodplain management criteria may seem, at first glance, to be similar to area variances, this is not actually the case. Variance requests that deal with maximum height or setbacks

are usually related to aesthetic concerns, and may affect property values. Variances from floodplain management criteria are not related to aesthetics, but rather may affect the safety and protection of the public, the environment, and the flood risk of a community.

Any variance from local floodplain management standards must be closely scrutinized to determine if it meets State and local standards for variance issuance, as well as the minimum standards adopted by the community in the variance requirements of the floodplain management ordinance.

Variances can be granted for new construction and Substantial Improvements only if *all* the other NFIP requirements in the local floodplain management ordinance are met. If even one criterion is not met, the variance should not be granted.

DEFINITIONS

Substantial Damage: Defined by the National Flood Insurance Program (NFIP) as *“damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.”* or exceeds 50 percent of the market value of the structure (or smaller percentage if established by the community) before the ‘start of construction’ of the improvement. This term includes structures that have incurred ‘Substantial Damage,’ regardless of the actual repair work performed.”

Substantial Improvement: Defined by the NFIP as *“any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals* Refer to FEMA P-758, *Substantial Improvement/ Substantial Damage Desk Reference* (2010) for more information.

3.2 NFIP Variance Standards

The NFIP does not set forth an absolute criterion for granting variances from the minimum floodplain management provisions. NFIP regulations provide the basis for each participating community to determine whether construction or other development activities qualify for a variance from the local floodplain management regulations.

The authority and the responsibility to approve or disapprove a variance rest with the local government. However, because variances may expose insurable property to a higher flood risk, the Federal Emergency Management Agency (FEMA) evaluates variances granted by a community to determine whether they are consistent with sound floodplain management standards as required for participation in the NFIP. The floodplain management variance criteria contained in the NFIP regulations are intended to:

- Provide specific floodplain management input to the community criteria for approving variances;
- Inform participating communities of FEMA’s guidelines for evaluating local compliance with the standards required for participation in the NFIP;
- Ensure appropriate notification of the issuance of a variance; and
- Advise applicants and future owners of potentially high flood insurance rates.

The NFIP variance standards are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. Though standards vary among States, in general, a properly issued variance is granted for a parcel of property with “physical characteristics” so unusual that complying with the local floodplain management ordinance would create an exceptional hardship to the applicant or the surrounding property owners. Those characteristics must be unique to that specific parcel or property and not be common to or shared with adjacent parcels. The unique characteristics must pertain to the land itself and the intended function of the structure, *not to its inhabitants or the property owners*. Therefore, financial hardship or the health condition of the property owner is never a sufficient cause for granting a variance. Section 3.3.3 of this document details the “Good and Sufficient Cause” that must be considered for approval when reviewing a variance.

Some communities have considered floodplain variances based solely on the fact that another Federal or State agency permit has been issued or a project is federally funded (e.g., a U.S. Army Corps of Engineers Section 404 permit or a U.S. Office of Housing and Urban Development Community Development Block Grant). While the NFIP requires a community “to assure that all necessary permits have been received from those government agencies from which approval is required by Federal or State law” (CFR §60.3(a) (2) before issuing a floodplain development permit or considering a variance, the determining factor should be whether a development permit or variance will meet the requirements of the community’s local floodplain management provisions, including the cumulative impacts of development within the SFHA. Even if a Federal or State permit has been issued, a community must still determine whether the requirements of the local floodplain management ordinance have been met, and either issue or deny a floodplain development permit, and then review whether to grant a variance. A variance granted based solely on the applicant obtaining a permit or funding grant from a Federal or State does not meet the NFIP requirement in CFR 44 §60.6.

VARIANCES DURING A POST-DISASTER PERIOD

Frequently, post-disaster situations lead a community to erroneously consider granting variances so the rebuilding process can begin quickly. Often, communities are pressured to grant variances for structures that have incurred Substantial Damage. The enforcement of a floodplain management ordinance requires new construction and structures that have had Substantial Damage in SFHAs to be elevated or floodproofed (non-residential only) so they are at or above the base flood elevation (BFE). The consistent enforcement of such an ordinance should

be viewed by community officials as the fulfillment of a responsibility to protect the lives and property of residents and business owners, especially in the aftermath of a disaster. It is also a requirement for implementing a sound floodplain management program for the overall betterment of the community, risk reduction, and continued participation in the NFIP. For these reasons, a variance requesting the alteration of floodplain management ordinances involving elevation of a damaged structure in an SFHA would not meet the NFIP variance criteria.

3.3 NFIP Variance Regulations

The following sections describe each criterion of the variance regulations as stated in 44 CFR §60.6.

3.3.1 Floodways

Communities should not issue variances for construction within a floodway if the variance will result in an increase in flood levels during the base flood event.

44 CFR 60.6(A)(1)

Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

Floodway Definition and Background

The floodway is defined in the NFIP regulations as:

...the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. (44 CFR §59.1)

The floodway is designated on FEMA's Flood Insurance Rate Maps (FIRMs) for riverine areas based on a detailed study called a Flood Insurance Study. It is important to reserve the floodway as a water conveyance area because any encroachments or obstructions placed in the floodway will increase flood heights and/or water velocities, and consequently increase flood damage to other properties.

BASE FLOOD ELEVATION (BFE)

Elevation of flooding, including wave height, having a 1 percent chance of being equaled or exceeded in any given year. The BFE is the basis of insurance and floodplain management requirements and are shown on FIRMs.

Floodway Variance Requests

The intent of this variance criterion is to prohibit development that may increase flood levels which, in turn, could increase potential flood damage to the development and to structures of other property owners. In most cases, alternative locations for the proposed development are available outside the limits of the floodway. Other actions may also be taken or required as a condition of approval to compensate for increased flood levels, such as requiring the applicant to install flood-control measures to accommodate increased discharge.

The burden of proof rests on the applicant or developer, not FEMA, the local community, State, or other agency, to demonstrate that scientific data were used to determine that no increase in flood levels would result from the proposed development. Sufficient proof may include, but is not limited to, studies provided by an appropriately licensed professional.

If no feasible or practical alternative location for the proposed development is available, the variance applicant must demonstrate that it conforms to all of the requirements stipulated in NFIP variance regulations and is in accord with other floodplain management regulations such as:

Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. 44 CFR 60.3(d)(3)

Even when all variance criteria are met and a floodway analysis has been reviewed and approved by the community, a community may still choose not to grant a variance and deny issuance of a floodplain development permit. Some communities choose to adopt a higher regulatory standard that exceeds the minimum requirements of the NFIP. As a result, based on the potential hazards involved, communities can still prohibit the issuance of variances for floodway development.

When deciding whether to issue a variance, the community should consider the potential liability it may encounter if the granting of a variance later results in increased property damages, personal injuries, or even loss of life during a flood.

Generally, a community may prohibit variance requests based on three potential flood hazards in the floodway:

- The hazard to the development itself;
- The increased hazard the development may cause to other properties; and
- The risk to individuals stranded in isolated structures surrounded by what is, in many cases, rapidly flowing, debris-laden floodwater, and the risk to the rescue workers.

For example, granting a variance that allows the placement of a manufactured home below the base flood elevation (BFE) in a floodway will endanger the lives of its inhabitants because a flood will likely severely damage or demolish the home. Additionally, manufactured homes can float into other structures and cause severe damage, or become wedged in a bridge opening or culvert, which can dramatically increase flood heights upstream and endanger other citizens.

Because of the hazards of granting variances for development in the regulatory floodway, community officials should carefully consider all of the possible dangers created by the variance issuance. For example, local emergency services personnel may be endangered while attempting to rescue the occupants in fast-moving floodwater. In most cases, the incremental benefits of allowing the development are outweighed by the increased costs of future flood damage and increased life safety hazards.



A flooded manufactured home can float off its foundation and cause additional damage nearby.

3.3.2 Lots of One-Half Acre or Less

This variance criterion specifies that variances should generally be granted only for lots that are one-half acre or less; variances for lots of larger sizes must include significant technical justification. The intent of this variance provision is not to place a lesser burden of justification on one-half acre lots, but a greater burden on lots larger than one-half acre.

Variance Requests for Lots One-Half Acre or Less

Common misinterpretations of this variance criterion include using it to justify variance requests related to personal convenience, preference, or aesthetics, e.g., the height inconsistency that would result between adjacent structures if the middle one were elevated to or above the BFE. Aesthetics or other personal preferences should never be a consideration when making variance determinations. This variance criterion addresses the physical, not the aesthetic, characteristics of a lot in relation to the adjacent lots. When balancing an applicant's personal issues with issues related to public health and safety, such as the minimum NFIP criteria, a community should always choose public safety and the protection of lives and property.

Some communities misinterpret this variance criterion to mean that variances can be granted systematically for all remnant or "in-fill" lots of less than one-half acre located in subdivisions built prior to the effective date of the community's current FIRM. Granting a variance on an "in-fill" lot of less than one-half acre is not automatic.

The granting of variances for small lots where elevation on fill will pose an exceptional hardship due to drainage problems should be rare. Variances for "in-fill" lots of one-half acre or less should be granted on the basis of potential drainage problems only if, as 44 CFR § 60.6(a)(2) explicitly states, all other variance criteria are met. In addition, communities should grant variances for "in-fill" lots only if a professional engineer or architect has prepared and certified data demonstrating that no technically feasible methods are available to alleviate or mitigate the drainage problems.

Variance Requests for Lots Larger Than One-Half Acre

The 44 CFR §60.6(a) specifically states that "as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases." The one-half acre threshold is meant to be a *general* cutoff point and is related to the intrinsic qualities of the site or parcel; as the regulations state, "deviations from that limitation may occur" provided sufficient cause has been demonstrated by the applicant in accordance with the variance criteria. However, lots larger than one-half acre, in nearly all instances, have sufficient space to elevate structures on fill to or above the BFE without resulting in adverse drainage impacts on adjacent properties and structures, whether or not the adjacent structures' lowest floor elevations are at or below grade. Because of the additional storage and infiltration capacity on

44 CFR 60.6(A) AND (A)(2)

While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.

Variances may be issued by a community for new construction and substantial improvement to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a)(3), (4), (5) and (6) of this section.

larger lots, and because of the flexibility of being able to choose a location on a large lot that will have less impact, the technical justification required for issuing a variance based on potential drainage problems increases as the lot size increases beyond one-half acre. Site-specific considerations will vary, including the size of the structure relative to the size of the lot, as well as the location of the structures relative to each other.

Compliant Mitigation Measures for Large and Small Lots

Many design and construction alternatives are available to reduce potential drainage problems while still allowing a structure to be built in full compliance with NFIP regulations. Several acceptable elevation techniques cause no more, and usually less, disruption of drainage patterns than building a structure at ground level through a variance. Examples include:

- Elevating the structure on pilings, columns, or extended foundation walls;
- Grading or landscaping the elevated fill pad to drain away from adjoining properties; and
- Creating natural or artificial infiltration fields or systems at the intersection of the fill slope and the natural ground.

These types of alternatives are often cost effective and visually appealing, without creating drainage problems for adjacent structures. Studies have demonstrated that floodplain-compliant development construction practices and alternatives are effective at mitigating the flood threat and risk to life and property while promoting resiliency. The initial cost of flood-resistant construction has been demonstrated to offset the financial impacts of emergency response, recovery, and other costs associated with flooding, such as the cost of reconstruction, displacement from the residence or business, and loss and replacement of building contents.

3.3.3 Good and Sufficient Cause

A variance request by an applicant that is based on a “good and sufficient cause” is one that deals solely with the unique site-specific physical characteristics of the property, subdivision lot, or land parcel in question. Physical conditions are uniquely inherent to the land or property and will not change or be significantly altered over time. A “good and sufficient” cause for a variance occurs when a parcel of land possesses physical characteristics so unusual that complying with NFIP regulations in a local ordinance would create an exceptional hardship related to the property, the surrounding property owners, or the community in general. In addition, the unusual physical characteristics must be unique to that property and not be shared by adjacent parcels or be typical of other lots in the community.

44 CFR 60.6(A)(3)(I)

Variations shall only be issued by a community upon a showing of good and sufficient cause.

A rendering of a “good and sufficient” cause should never be based on the design character of the planned construction or Substantial Improvements to the structure, the personal difficulties of the owner or inhabitants, or local provisions that regulate standards other than health and public safety standards (e.g., aesthetic restrictions of subdivision homeowner associations). The variance should not be based on the convenience that it would afford the applicant. Inconvenience, aesthetic considerations,

physical handicaps, personal preferences, the disapproval of one’s neighbors, or homeowners association restrictions do not qualify as “good and sufficient” causes. In addition, the financial hardship of the property owner is never a “good and sufficient” cause for granting a variance. Granting a variance for construction in a flood hazard area based on financial hardship only increases the probability that the owner will suffer high health and safety risks as well as monetary adversity when the structure is damaged during a flood. In addition, the structure will be subject to higher insurance premiums.

The justification for granting a variance based on physical characteristics should be such that it remains valid over time. In contrast, personal difficulties of the owner and intended uses of buildings can change dramatically with changes in ownership. For example, once the personal circumstances of the owner changes (e.g., the property is sold or leased, or the owner no longer suffers from financial hardship) the justification for the variance may no longer exist, but the structure remains, exposing future owners/occupants to the nonconforming nature of the property and any hazards and public safety problems associated with it. This exposure of life and property to risk from flood damage would be directly attributable to a variance issued based on the personal difficulty of the previous owner.

3.3.4 Exceptional Hardship

The hardship that would result from failure to grant a requested variance must be exceptional, unusual, and specific *to the property involved*, not the personal circumstances of the applicant. When determining whether an applicant has established an exceptional hardship sufficient to justify a variance, the local variance appeal board or other governing body must weigh the applicant’s hardship against the community-wide flood damage prevention requirements.

44 CFR 60.6(A)(II)

Variations shall only be issued by a community upon a determination that failure to grant the variance would result in exceptional hardship to the applicant.

As stated in Section 3.3.3, inconvenience, aesthetic considerations, physical handicaps, personal preferences, the disapproval of one’s neighbors, or homeowners association restrictions do not qualify as exceptional hardships. This applies even if the alternative means of construction are more expensive or complicated than building the structure with a variance, or if they require the property owner to use the parcel differently than originally intended or build the home elsewhere.

Two examples are provided below to illustrate situations in which variances should not be granted:

1. *A property owner requests a variance to the elevation requirement because it will cost the owner several thousand dollars to elevate the house to comply with an ordinance and an additional several thousand to build a wheelchair ramp to provide access for a handicapped family member.*

While financial considerations are always important to property owners, and the needs of the handicapped person certainly must be accommodated, these difficulties are not in the category of “exceptional hardships” as they relate to floodplain management variances. These characteristics result in personal hardships (the physical condition and financial situation of the homeowner) rather than pertaining to the property itself.

- 2. A property owner requests a variance to the elevation requirement because it will result in a structure that is architecturally different from other structures within a subdivision governed by a homeowners association.*

Homeowners associations or subdivision boards frequently place restrictions on landscaping and construction practices, such as the total height to which structures can be built, to promote architectural and aesthetic consistency. The owner, and usually the prospective neighbors and homeowners association, protest that the structure, if elevated, will be architecturally out of sync with other structures on the block and that property values will be lowered as a result.

Local governments must never grant variance requests for exceptional hardship stemming from architectural considerations or conflicts with local subdivision aesthetic regulations. The safety of all residents takes precedence over neighborhood aesthetics.

3.3.5 Increased Flood Heights

Development that receives a variance must not cause an increase in water surface elevations (WSELs) during floods of any magnitude, not just the base flood. Therefore, to grant a variance under this provision, a community must meet all the other variance requirements, and the applicant must demonstrate through technical studies that the proposed development will not increase flood heights.

44 CFR 60.6(A)(3)(III)

Variations shall only be issued by a community upon a determination that the granting of a variance will not result in increased flood heights.

The underlying principle is that an increase in flood heights may increase flood damage to structures in the community that otherwise would not be floodprone. Allowing flood heights to increase is inconsistent with the objectives of sound floodplain management and undermines a community's efforts to protect structures by requiring elevation or floodproofing to or above the BFE. Allowing any increase in flood heights would decrease the level of protection provided by the NFIP requirements.

3.3.6 Public Safety and Nuisances

Variations must not result in additional threats to public safety or create nuisances. Local flood damage prevention ordinances and minimum NFIP requirements are intended to help protect the health, safety, well-being, and property of the local citizens. Local floodplain management is a long-range community effort usually made up of a combination of approaches, including adequate drainage systems, warning and evacuation plans, and keeping new property—especially homes—at or above the BFE. These long-term goals can be met only if exceptions to the flood damage prevention ordinances are kept to a minimum.

44 CFR 60.6(A)(3)(III)

A variance will not cause additional threats to public safety or create nuisances.

Variations that allow the construction of habitable area below the BFE, especially in high-hazard areas such as floodways and areas adjacent to coastal Zone V, increase the risk to life and property of both occupants

and emergency services personnel. The potential for loss of life is greatest in structures where the lowest floor is below the BFE, and where flood depths are greater than 3 feet or where high velocity floodwater is present.

structured below the flood elevation, the variance then raises public safety concerns for the homeowner and adjacent properties.

In addition to potentially increasing public safety concerns, granting variances for elevation requirements often results in abandonment when non-elevated structures are damaged during flood events, thereby creating a public nuisance.

3.3.7 Public Expense

Extraordinary public expenses may include protection and/or repairs to structures, time and materials expended by emergency service personnel, the expense involved in operating disaster assistance programs, and the cost to communities to:

44 CFR 60.6(A)(3)(III)

Variances shall only be issued by a community upon a determination that the granting of a variance will not result in extraordinary public expense.

- Repair or replace public facilities and infrastructure that continue to be exposed to flood damage because a variance was issued;
- Publically fund emergency flood protection measures, such as sandbags and temporary floodwalls, used to protect structures exposed to flooding as a result of the issuance of an elevation variance;
- Accommodate time and equipment expended by emergency services personnel to evacuate an area or rescue occupants of flooded structures;
- Identify public disaster assistance needed by occupants of structures exposed to increased flooding following the issuance of a variance; this assistance may be in the form of various Federal disaster assistance programs (e.g., FEMA, Small Business Administration), non-government organization assistance (e.g., Red Cross), and denominational and other private donations; and
- Repair or demolish flood-damaged properties when such properties were granted variances and the owners, unable to afford repairs, abandon them.

3.3.8 Fraud and Victimization

Local governments should be careful to never grant variances that have the potential to cause public victimization or fraud. Public fraud or victimization can result when a property that was granted a variance changes ownership.

44 CFR 60.6(A)(3)(III)

Variances shall only be issued by a community upon a determination that the granting of a variance will not cause fraud on or victimization of the public.

An unsuspecting buyer may be unaware that the structure is subject to flood damage and costly flood insurance rates. Frequently, unsuspecting buyers of previously flooded homes are not aware of the

magnitude of previous flood damage to the structure, or that a variance from the required flood elevation was granted.

An example of the potential for public victimization is when a variance for a nonconforming elevation or floodproofing requirement is granted for a storage warehouse. The units or “bays” of the warehouse, typically rented to the public for personal uses, may victimize citizens who are unaware of the flood hazard and the risk to their property. If the warehouse is flooded and its contents damaged, citizens renting units may have no recourse for financial compensation.

3.3.9 Existing Local Laws or Ordinances

A community should not grant a variance from its local floodplain ordinances if the variance is in conflict with other existing local laws or ordinances or Federal and State laws or regulations that, by statute, the community is required to obey.

44 CFR 60.6(A)(3)(III)

Variances shall only be issued by a community upon a determination that the granting of a variance will not result in conflict with existing local laws or ordinances.

Examples of local laws that may conflict with a floodplain management variance include State and local building codes, health and safety regulations, and laws protecting environmental and other natural resources, including but not limited to threatened or endangered species and historic or cultural resources. Any variance must comply with the provisions of State zoning legislation and case law.

While an approved variance to the floodplain management regulations may allow particular development within the SFHA, a variance to the floodplain standards cannot be used to waive compliance or development requirements for other local, State, or Federal requirements. A variance, if granted, must approve only the absolute minimum necessary to relieve the particular hardship identified through the variance process with regard to floodplain management; it must not exclude or exempt the development from compliance with overlapping policies, regulations, authorities, and jurisdictions.

If a variance to the floodplain development requirements is granted, the development must demonstrate receipt of permits and approvals from all other local, State, and Federal agencies as part of the variance process and prior to issuance of the floodplain development permit associated with the proposed development. For example:

- If a community has adopted the 2012 International Building Code the development must still conform to the applicable building code requirement. Conformance includes verification that all other applicable Federal and State permits have been received prior to issuance of the floodplain development permit.
- If a community has not adopted the 2012 International Building Code or other land use regulations, the development must still comply with the stand-alone provisions of the floodplain ordinance as well as all other applicable State and Federal laws. Conformance includes verification that all other applicable permits have been received prior to issuance of the floodplain development permit.

State and Federal laws that may apply even if a variance has been granted include, but are not limited to:

- State health department requirements for well or septic systems, or other requirements
- Threatened and Endangered Species Act of 2005
- National Historic Preservation Act of 1966
- National Environmental Policy Act of 1970
- Clean Water Act
 - Federal and State wastewater or stormwater discharge requirements and permits
 - Clean Water Act, Section 404 permits

A variance to the floodplain ordinance cannot be used to waive compliance or development requirements for other local, State, or Federal requirements.

When it is not feasible to secure all other permits prior to consideration of a variance and issuance of a floodplain development permit, the local jurisdiction may condition issuance of a flood development permit on receipt of these permits. In these instances, it is important to have administrative procedures established to:

1. Identify which permits are required;
2. Refer and notify the applicable authorities and jurisdictions of permit issuance;
3. Specify within the floodplain development permit, as conditions of approval, the expectation and need to secure and provide copies of these permits in a timely fashion;
4. Communicate these requirements to the applicant and provide contact information to initiate the permitting process with other applicable authorities; and
5. Follow up with the applicant to complete the file with copies of the permits from the other applicable jurisdictions.

3.3.10 Minimum Necessary to Afford Relief

A variance granted by a community must be the absolute minimum needed to minimize or reduce future flood damage and still relieve the hardship, as defined by the previous provisions. In considering variances, the community review board should use local technical staff expertise and recommendations from the building, planning, zoning, or engineering departments.

A “blanket variance” that would waive all NFIP requirements could never meet all of the requirements of a variance. There will always be some feasible action that can be taken to reduce the potential for flood damage.

44 CFR 60.6.(A)(4)

Variances shall only be issued by a community upon a determination that the granting of a variance is the minimum necessary, considering the flood hazard, to afford relief.

For a variance request to waive the elevation requirement, the community review board must require the “minimum necessary” actions. For example, the minimum actions necessary for a non-residential structure may include implementing “wet floodproofing” techniques and meeting the other provisions in the local floodplain management ordinance, including properly anchoring the structure, using flood damage-resistant materials and construction techniques, and elevating utilities as defined in 44 CFR 60.3(a)(3). As another example, if an applicant can justify a variance from the requirement to elevate building utilities above the BFE, the community review board should still require as much elevation as possible to provide some flood risk protection or risk to adhere to the intent of the flood ordinance.

3.3.11 Disclosure

Community officials must notify the applicant that the issuance of an elevation variance will result in increased flood insurance premium rates and that construction below the BFE will increase risks to life and property.

If the applicant is not required to purchase flood insurance at the time the variance is granted, costly flood insurance rates may not be a factor. However, if the structure experiences flooding at some point in the future, the owner may wish to purchase flood insurance. In addition, future buyers of a structure for which a variance has been granted may wish or be required to purchase flood insurance and may be discouraged from purchasing the structure because of costly flood insurance rates. This situation can be compounded when an unsuspecting buyer purchases such a structure and later discovers that flood insurance is required, at a prohibitive cost.

In addition to notifying the applicant regarding the insurance implications of a variance, the “Planning Considerations in Floodprone Areas” section of the NFIP regulations (44 CFR 60.22) recommends that a community consider requiring full disclosure of the variance “to all prospective and interested parties (including but not limited to purchasers and renters) [44 CFR 60.22(c)(3)(ii)]. Such a disclosure is important and necessary to inform subsequent buyers of structures for which an elevation variance was granted. Some communities require that a copy of the variance be attached to the property title abstract to protect a prospective buyer from victimization. The attached variance should include any conditions and findings that relate to the granting of the variance.

From a public safety standpoint, the prospective buyer has a right to know that the structure will be susceptible to flooding and its occupants subject to a flood risk. From a financial standpoint, the prospective buyer has a right to know that the structure and its contents will be susceptible to damage and that the premium rates applied can be much higher than structures built in compliance with the minimum NFIP standards.

44 CFR 60.6(A)(5)

...a community shall notify the applicant in writing over the signature of the community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required... to afford relief.

3.3.12 Functionally Dependent Uses

The NFIP regulations define a “functionally dependent use” as one that cannot perform its intended purpose unless it is located or carried out near water. The term includes only docking facilities necessary for loading and unloading cargo or passengers, and ship building and repair facilities.

The definition of “functionally dependent use” limits variances to the practical problems of building and repairing ships, loading and unloading cargo and passengers from vessels, moving the cargo onto other forms of transportation, and moving the cargo to long-term storage facilities that fully comply with NFIP criteria.

The term does not include long-term storage or related manufacturing facilities since these uses can be located outside the floodplain or fully comply with all NFIP requirements, and are therefore excluded from the definition of functionally dependent use. In accordance with this variance provision, variances for new construction, Substantial Improvements, and any other development necessary for the conduct of a functionally dependent use must meet all other floodplain development and applicable variance requirements. In addition, the structures or other development must be protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

In many cases, such as port facilities, the seafood industry, or shipbuilding, NFIP floodplain management criteria can be met with the industry still being able to operate as intended. However, because functionally dependent uses must be located on or adjacent to water, practical and operational difficulties may result from the physical characteristics of the property. One way to meet the floodplain management requirements is to use wet floodproofing techniques, such as installing flood damage-resistant materials, elevating mechanical equipment, locating offices above the BFE, using ground fault circuit interrupters, or developing an emergency plan to remove contents before a flood.

If a variance is used to address the unique challenges of functionally dependent uses, it must include only the minimum necessary to afford relief considering the flood hazard. When evaluating variances for functionally dependent uses, the primary concerns should be:

- Preserving human health and safety, both within and surrounding the proposed development, including emergency responders;
- Minimizing flood damage during the base flood;
- Ensuring that no ancillary or additional threats to public welfare will be created; and
- Ensuring that only minimum deviation from the NFIP requirements is made to allow the intended use of the facility.

44 CFR 60.6(A)(7)

Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of paragraphs (a)(1) through (a)(4) of this [60.6] section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

As with the other variance criteria, no variances for functionally dependent uses may be issued within a designated regulatory floodway if flood levels would increase during the base flood because an increase in flood levels would increase potential flood damage to other property owners.

In many situations, feasible locations for a functionally dependent use are available outside the floodway. If a functionally dependent use must be located in a floodway, the applicant must either demonstrate (using technical analyses) that no increase in the BFE will result or provide additional floodway carrying capacity, such as through channel improvements, to accommodate increased flood flows and ensure that the BFE does not increase as a result of the variance.

Local officials should contact their FEMA Regional office for technical assistance if they encounter situations where functionally dependent uses must be located in a floodway and cannot meet the no-increase-in-flood-stage requirement.

3.3.13 Historic Structures

A variance may be issued for the reconstruction, rehabilitation, or restoration of historic structures if the variance is the minimum necessary to preserve the historic character and design of the structure. “Historic structures” are those listed in the Department of the Interior (DOI) National Register of Historic Places, a DOI-certified State Inventory of Historic Places, or a certified local inventory, and structures listed as a contributing building in a listed historic district.

44 CFR 60.6(A)

Variances may be issued for the repair or rehabilitation of historic structures upon a determination that (i) the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and (ii) the variance is the minimum necessary to preserve the historic character and design of the structure.

The original intent of providing special treatment to historic structures was to comply with the intent of the National Historic Preservation Act of 1966 by:

1. Allowing historic structures to always maintain pre-FIRM subsidized insurance rates; and
2. Minimizing the adverse impacts of NFIP requirements on the historic integrity of historic structures.

The granting of a variance should be based on a structure-by-structure review to determine whether elevation (or floodproofing, if a non-residential structure is involved) to or above the BFE would destroy the historic character or design of the structure. Variances should only be granted for individual structures and should never be granted for portions of a historic district or an entire historic district. For example, if elevating a historic structure would destroy its character and cause it to be removed from the DOI National Register of Historic Places, a variance for the elevation requirement may be considered. However, the community should place conditions on the variance to minimize flood damage such as:

For additional guidance on historic structures, see FEMA P-467-2, *Floodplain Management Bulletin on Historic Structures* (2008).

- Elevate all utilities and finished interior workings to or above the BFE or to the maximum extent possible or practically feasible;
- Use flood damage-resistant materials for interior and exterior improvements wherever possible; and
- Raise the interior floors to or above the BFE or to the maximum extent possible (this is often technically feasible in older structures with high ceilings).

If repair or improvements result in the loss of the structure's historic designation, the structure would no longer qualify for the variance and would be required to meet the NFIP floodplain regulations.

Community Considerations

In addition to this "historic structure" variance criterion, another provision of the NFIP also provides relief for historic structures located in the SFHA. The definition of Substantial Improvement at 44 CFR 59.1 excludes historic structures from its definition by excluding "any alteration of an historic structure provided that the alteration will not preclude the structure's continued designation as 'historic structure.'" The same exclusion also applies to historic structures that have incurred Substantial Damage.

In regulating historic structures, communities have the option of using the provisions as stated in the variance criteria at CFR 60.6(a) or the definition of Substantial Improvement to address the unique needs of historic structures. Communities should adopt only one option to regulate historic structures. Some communities have chosen to adopt the variance criteria in their ordinance, while other communities have chosen to include the historic structure exemption as part of their Substantial Improvement definition. In either case, historic structures can be excluded from the NFIP elevation and floodproofing requirements (non-residential only). When a community exempts a historic structure from the NFIP floodplain management requirements, it should document the process and maintain the documents in the community permit files.

Property Owner Considerations

Owners of historic structures should be aware that physical alterations made to a historic structure may cause the structure to be removed from the National Register of Historic Places, DOI-certified State Inventory of Historic Places, or local inventory. If such alterations cause the structure to lose its official listing or historic status, the structure would no longer be a historic structure for the purposes of the NFIP and would be required to meet the minimum floodplain management requirements of the local ordinance. A determination of whether the structural alternations would forfeit the historic designation should be made before requesting a permit.

SECTION 4

Common Situations in which a Variance May Be Requested

There are several situations in which a variance may be requested. In each case, the variance should be reviewed by the community on its own merit and not in conjunction with an adjacent property.

4.1 Appurtenant/Accessory Structures

One of the most common variance requests that a community may encounter is for appurtenant structures, especially detached garages and storage sheds. If technically feasible, all accessory structures should be elevated to or above the BFE to minimize damage to the structure.

The following are possible conditions that a community may place on a variance for an accessory structure to ensure damage is minimized during a flood event:

- Use of the accessory structure must be restricted to parking of personal vehicles or limited storage (storage that is incidental to the primary use of the principal structure). For instance, the storage in the accessory structure should be limited to items such as lawn and garden equipment, snow tires, and other low-damage items that cannot be conveniently stored in the principal structure.
- The accessory structure must be designed with an unfinished interior and constructed with flood damage-resistant materials as described in FEMA’s NFIP Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements* (2008).
- The accessory structure must be adequately anchored to prevent flotation, collapse, or lateral movement.
- The accessory structure must have adequate flood openings as described in FEMA’s NFIP Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosure Below Elevated Buildings in Special Flood Hazard Areas* (2008).
- Any mechanical and utility equipment in the accessory structure must be elevated to or above the BFE or must be floodproofed.
- The accessory structure must comply with floodway encroachment regulations in the floodplain management ordinance.

ACCESSORY OR APPURTENANT STRUCTURE

Defined in 44 CFR 59.1 as: “a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.”

Communities should not grant variances to entire subdivisions for accessory structures, especially detached garages. As with any other structure type, variances should only be reviewed and issued on an individual or case-by-case basis and be based on the unique characteristics of the site.

Accessory structures located in Zone V areas are subject to excessive hydrodynamic forces associated with wave action and cannot meet the variance conditions described above. In these locations, communities should prohibit accessory structures in Zone V areas, or allow only very low value, “disposable” storage sheds unless the sheds are elevated to or above the BFE. For additional information, see FEMA NFIP *Technical Bulletin 5, Free-of-Obstruction Requirements for Buildings Located in Coastal High Hazard Areas*.

4.2 Boat Storage Facilities

Many boat storage facilities constructed in SFHAs are steel-framed buildings with sheet metal exterior walls, a roof, and a concrete floor at ground elevation. Some of these facilities store boats vertically from the ground to the roof on multi-tiered overhead racks using a hydraulic forklift to hoist the boats. Other facilities are simpler in design and function, storing boats on wheeled trailers at ground level.

For the purposes of NFIP floodplain management requirements, boat storage facilities that are walled and roofed buildings are by definition “structures” and must comply with the NFIP requirements. For boat storage facilities to comply with the minimum NFIP requirements, the lowest floor must be elevated to the BFE, or the walls must be floodproofed to be watertight to the BFE.

LOWEST FLOOR

The “lowest floor” of a structure is defined by the NFIP as the lowest floor of the lowest enclosed area.

In determining whether the construction of a boat storage facility is in compliance with minimum NFIP regulations as adopted by the local ordinance, the following factors should be considered:

- Are the construction materials and architectural design of the structure flood resistant?
- Does the proposed operating plan include storage position and techniques (e.g., vertical racks, ground level) and transporting procedures (e.g., forklift, trailers)?
- What is the distance from the water source and the intermediate terrain?
- What is the lot size and orientation?
- What is the severity of the flood hazard (e.g., height of the BFE above natural grade and risk zone designation, Zone V, Zone A, floodway)?
- What is the anticipated water velocity during flood conditions?
- Are the utilities elevated above the BFE?

WET FLOODPROOFING

Wet floodproofing involves purposely designing a building to withstand inundation by floodwaters and constructing it with materials resistant to or minimally damaged by floods. FEMA’s Technical Bulletin No. 7-93, *Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program*, provides technical information on wet floodproofing.

If the community determines that a variance is warranted, the variance should be issued

only for the minimum necessary to afford relief related to the flood hazard. Communities should place conditions on this type of variance to minimize flood damages. An example would be stipulating that wet floodproofing measures (refer to text box) be applied to a boat storage facility to reduce damage to the structure and its contents. Property owners should understand, however, that wet floodproofing will not result in a reduction of insurance premiums. Structures that are wet floodproofed are rated by the elevation difference between the lowest floor (usually the ground elevation) and the BFE.

4.3 Subdivisions

Variances are not intended to provide a means of exempting lot divisions, phases of subdivisions, or entire subdivisions from floodplain management regulations. Variances should never be granted as part of a split or the creation of multiple lots, phases of subdivisions, or entire subdivisions. Variances can affect public safety, such as variances to the elevation requirement for a subdivision that could potentially increase the risk of flooding for a large number of people, as well as the demand on local emergency services. The granting of variances by a community should be based on a site-specific, structure-by-structure review to determine whether all variance criteria are met. When a property is subdivided, streets and utilities are installed, and individual sites graded, it is generally relatively manageable and cost effective for property owners to meet the floodplain elevation requirements as stated in the local ordinance.

Subdivision design should account for the flood hazard characteristics of the properties. Communities should not approve subdivisions unless the design accounts for the flood hazard. The design of a subdivision should consider access to and from the subdivision to allow local residents a safe evacuation route from the development during a hazard event such as a flood. A safe evacuation route will reduce the demand for emergency services.

4.4 Temporary Development

- Communities may be asked to consider a variance to allow temporary development, such as a highway project or drilling operation, in the floodplain. A variance cannot be granted by a community when the proposed measure is permanent or affects insurable structures.
- Temporary projects, however, for which there is a net public benefit (such as a highway project) are not inconsistent with the variance criteria, provided the conditions described in this subsection are met.

DEVELOPMENT

The NFIP defines development as any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

4.4.1 Considerations for a Temporary Development Variance

- Two conditions should be closely considered by a community before granting a variance for temporary development:

- The magnitude of the impact (i.e., the potential height of the increase in WSEL) caused by the temporary project; and
- The number of insurable structures that would potentially be affected by such an increase during the base flood, and the severity of the impact.

Before granting a variance for temporary development, communities should consider issuing a temporary permit. The greater the increase in WSEL and number of potentially affected structures, the stricter the temporary performance requirements (e.g., sizing of temporary bridge openings) and the less justification for a variance. If the affected area has a low population density and one or more of the following factors are present, the community may want to consider allowing construction of a temporary project or other temporary development using a less restrictive standard:

- The increased flood hazard would be limited to property owned or leased by the State transportation agency or variance applicant, or property for which the owner has acquired “flowage” easement;
- The increased flood hazard would be limited to undeveloped community areas that the local government judges to have no development potential during the time the temporary measure would be in place;
- The increased flood hazard would not affect insurable structures (i.e., cause an increase in flood levels for structures that are already floodprone or cause non-floodprone structures to become floodprone); or
- The State or county transportation authority, another government agency with the power of eminent domain, or a private applicant has agreed to one of the following actions: (1) purchase or relocate structures affected by the proposed project, (2) elevate such structures to the temporary BFE, (3) purchase flowage or flooding easements, or (4) provide other forms of equivalent mitigation such as purchasing flood insurance for the duration of the temporary increase.

If one or more of the above factors are met, any increase in the BFE for the duration of the temporary permit should not adversely affect insurable structures in the community. In this case, the community may decide to grant a variance allowing a temporary project.

4.4.2 Storage of Equipment and Material in Temporary Development Projects

Per the NFIP definition of development, the storage of equipment and materials is subject to local floodplain development permit requirements. Continuous storage operations—such as lumber yards, landscape material yards, recreational vehicle/automobile storage and sale, and junk yards—are also considered development and are subject to floodplain development permit requirements. The storage of equipment and materials should not increase flood heights in the floodway and should meet the other required standards of the floodplain management ordinance.

It is a community’s responsibility to make a prudent and reasonable distinction between types of storage activities. This distinction should be based on considerations such as the length of storage time, nature of the materials or equipment being stored, physical characteristics of the floodplain, and characteristics of the flood flows. As a guide, the smaller the SFHA and longer the storage time, the more concerned a

community should become with the placement of materials and equipment within the SFHA and the potential impact of such activities on the storage and conveyance of floodwaters.

The unique characteristics of the site in relation to the flood threat and type of activity, material, or items to be stored may be significant. The type of flood exposure, such as flash flooding or backwater ponding, water velocity and depth, time of concentration, and potential accumulation of debris are factors to consider when determining the effect of allowing temporary storage within the floodplain. Generally, the potential for water to rise more rapidly, the greater the depth and velocity, and the potential to adversely impact neighboring properties, the greater the concern the community should have with the placement of materials and equipment and its impact on the storage and conveyance of floodwaters.

Local governments should be sure to distinguish between the temporary storage of materials and equipment in flood hazard areas and the storage activities associated with continuous businesses, construction operations, or other commercial and industrial enterprises.

SECTION 5

NFIP Flood Insurance Implications of Variances

Property owners should understand the financial consequences of constructing or repairing a building using an approved variance. While an approved variance may allow development within the SFHA to deviate from specific performance and building standards specified in a local floodplain ordinance, NFIP flood insurance rates and the flood insurance purchase requirement enforced by lending institutions cannot be waived. As described in Section 3.3.11, Disclosure, the variance regulations require that the community notify the applicant that flood insurance rates will likely be substantially higher than rates for a comparable structure that is fully compliant. A variance from elevation requirements—the most common kind of variance requested—increases the risk to a building, and that increased risk is reflected in higher annual insurance premiums. Insurance rates for a building built below the BFE can be substantially higher than those for elevated buildings.

If a local government receives a variance request to construct a building below the BFE, it must notify the applicant (in writing) that granting the variance will result in increased flood insurance premium rates, up to \$25 per \$100 of coverage. The variance-induced flood insurance premium rates may increase to a level beyond affordability for the owners. For example, a marine supply store on the Gulf Coast was built 14 feet below the BFE in Zone V, resulting in an annual flood insurance premium of \$25,000 on a building valued at \$100,000. In some cases, the applicant for the variance may not care about the cost of flood insurance. However, if the variance is approved, the impact of the variance on flood insurance premiums may affect future owners who, if they cannot afford the property's high flood insurance rates, may abandon the building and leave the community with a vacant, flood damaged, and essentially uninsurable building.

Property owners seeking to obtain a variance to reduce construction costs should understand that a variance may save money in the short term, but may result in higher costs over the long term as a result of higher insurance premiums or, if uninsured, in flood losses.

The insurance premiums for a single-family home are directly affected by the elevation of the first floor in relation to the BFE. Figure 1 shows a pre-FIRM building constructed with the lowest floor 7 feet below the BFE and an annual premium of \$830 that is flooded by the base flood event, incurring Substantial Damage. Figures 2 and 3 show different reconstruction scenarios and the resulting flood premiums. The illustrations provide a clear picture of the cost of actuarial post-FIRM flood insurance rates and, therefore, the true risk to which the building is exposed.

Note: The premiums cited in these figures are for the purposes of this example. Insurance rates vary based on flood zone, date of construction, and lowest floor elevation, and must be computed case-by-case. The premiums shown for the next series of illustrations were computed based on \$100,000 in building coverage. Current rates for these buildings may be different from those shown.

Recent changes to the National Flood Insurance Program may result in long-term premium increases to the Standard Flood Insurance Policy.

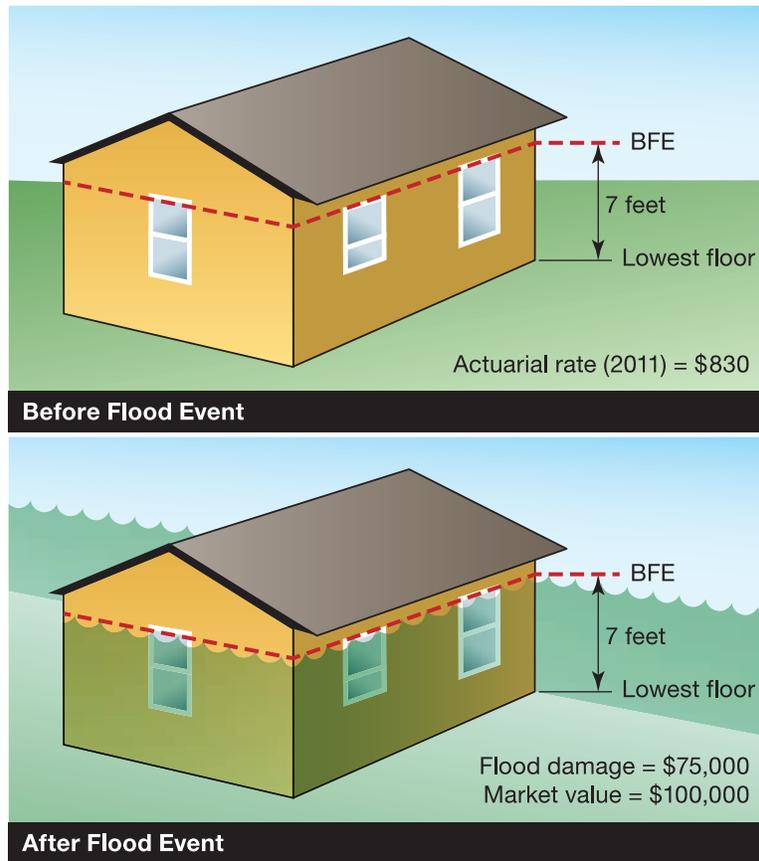


Figure 1: Pre-FIRM building with lowest floor 7 feet below the BFE incurred Substantial Damage during the base flood event.

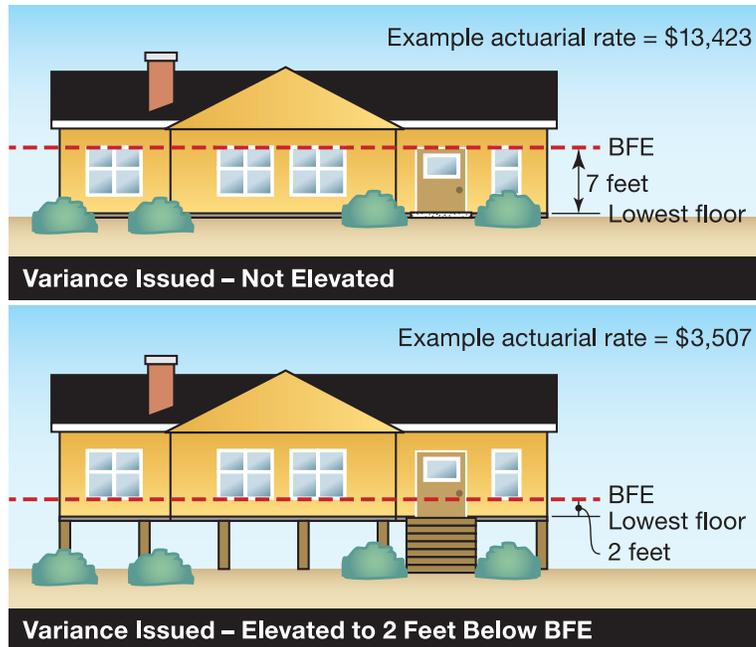


Figure 2: Two examples of repairs requiring a variance to the building shown in Figure 1. Note the example actuarial rates based on \$100,000 in building coverage.

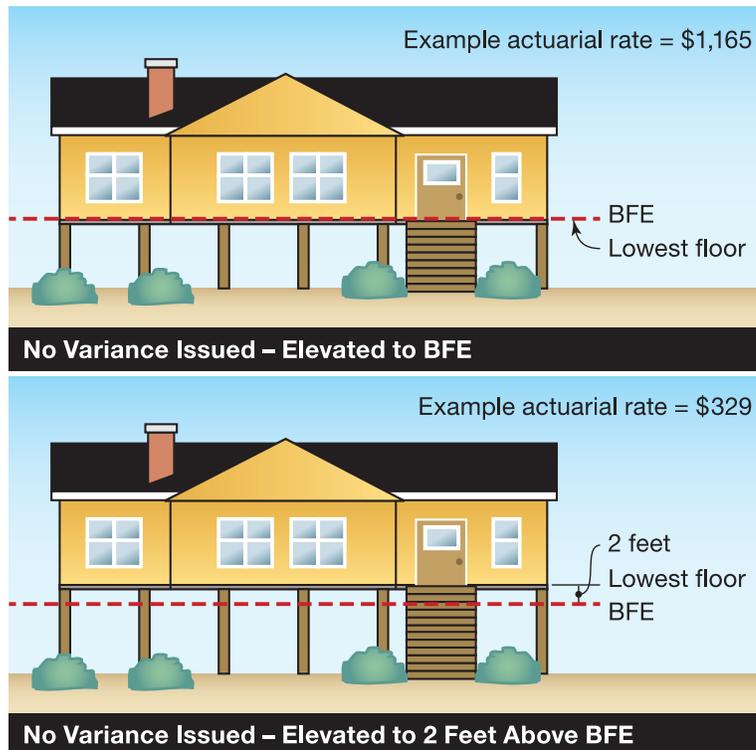


Figure 3: Two examples of repairs where no variance to the building shown in Figure 1. Note the example actuarial rates based on \$100,000 in building coverage.

SECTION 6

Additional Resources

Contact the FEMA Regional Office or the State Coordinating Agencies for the NFIP for assistance implementing the NFIP. The current listing of FEMA Regional Offices is provided at <http://www.fema.gov/about/contact/regions.shtm>. The NFIP State Coordinating Agencies are provided at <http://www.floods.org> (see State/Local Resource and Tools).

6.1 Federal Emergency Management Agency Publications

Guidance and Manuals

Floodproofing Non-Residential Structures. FEMA 102. May 1986. Available at <http://www.fema.gov/library/viewRecord.do?id=3581>.

Protecting Building Utilities From Flood Damage: Principles and Practices for the Design and Construction of Flood Resistant Building Utility Systems. FEMA P-348. November 1999. Available at <http://www.fema.gov/library/viewRecord.do?id=1750>.

Floodplain Management Bulletin on Historic Structures. FEMA P-467-2. May 2008. Available at <http://www.fema.gov/library/viewRecord.do?id=3282>.

Homeowner's Guide to Retrofitting: Six Ways to Protect Your House from Flooding. FEMA P-312. December 2009. Available at <http://www.fema.gov/library/viewRecord.do?id=1420>.

Recommended Residential Construction for Coastal Areas: Building on Strong and Safe Foundations. FEMA P-550. December 2009. Available at <http://www.fema.gov/library/viewRecord.do?id=1853>.

Protecting Your Home And Property From Flood Damage. FEMA P-805. October 2010, <http://www.fema.gov/media-library/assets/documents/21471?id=4654>.

Substantial Improvement/Substantial Damage Desk Reference. FEMA P-758. May, 2010, <http://www.fema.gov/media-library/assets/documents/18562?id=4160>.

Repairing Your Flooded Home. FEMA P-234. American Red Cross Publication 4477. October 2010.

Additional resources: <http://www.fema.gov/resource-document-library>.

National Flood Insurance Program (NFIP) Technical Bulletins

Available at <http://www.fema.gov/national-flood-insurance-program-2/nfip-technical-bulletins>:

- *Below-Grade Parking Requirements for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program.* FEMA Technical Bulletin-6-93 (FIA-TB-6). April 1993.
- *Non-Residential Floodproofing – Requirements and Certification for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program.* FEMA Technical Bulletin 3-93 (FIA-TB-3). April 1993.
- *Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program.* Technical Bulletin 7-93 (FIA-TB-7). December 1993.
- *Corrosion Protection for Metal Connectors in Coastal Areas for Structures Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program.* FEMA Technical Bulletin 8-96 (FIA-TB-8). August 1996.
- *Ensuring That Structures Built on Fill In or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding in accordance with the National Flood Insurance Program.* FEMA Technical Bulletin 10-01 (FIA-TB-10). May 2001.
- *Design and Construction Guidance for Breakaway Walls Below Elevated Buildings Located in Coastal High Hazard Areas in accordance with the National Flood Insurance Program.* FEMA Technical Bulletin 9. August 2008.
- *Openings in Foundation Walls and Walls of Enclosure Below Elevated Buildings in Special Flood Hazard Areas in accordance with the National Flood Insurance Program.* FEMA NFIP Technical Bulletin 1. August 2008.
- *Flood-Damage Resistant Materials Requirements for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program.* FEMA NFIP Technical Bulletin 2. August 2008.
- *Free-of-Obstruction Requirements for Buildings located in Coastal High Hazard Areas in accordance with the National Flood Insurance Program.* FEMA NFIP Technical Bulletin 5. August 2008.

6.2 Comments

Any comments on the Floodplain Management Bulletin should be directed to:

DHS/FEMA
Flood Insurance and Mitigation Directorate
500 C St., SW
Washington, D.C. 20472

6.3 Ordering Information

This document can be downloaded from the following Web site: <http://www.fema.gov/library/index.jsp>.

Copies of this bulletin and the above-listed publications are available from:

FEMA Publications Warehouse
4440 Buckeystown Pike
Frederick, MD 21704

The FEMA Publications Warehouse also accepts telephone requests (1-800-480-2520) and facsimile requests (240-699-0525)



FEMA

FEMA P-993
Catalog No: 14016-1

Resolution (NO. FCD 84-7)

FLOODPLAIN MANAGEMENT RESPONSIBILITIES

The Board of Directors of the Flood Control District of Maricopa County convened in the Supervisors' Auditorium at 205 west Jefferson Street, Phoenix, Arizona, on AUG 6 1984, 1984, with a quorum present, and in accordance with the recommendation of the Chief Engineer and General Manager, adopted the following Resolution on motion made by Mr.

_____.

Whereas, Chapter 259 Arizona Revised Statutes, was adopted by the Thirty-sixth Legislature, Second Regular Session, 1984 and signed by the Governor pertaining to flood control districts and floodplain management, and

WHEREAS, Chapter 259 became effective August 3, 1984, and

WHEREAS, the Maricopa County Board of Supervisors on July 26, 1982 approved the transfer of floodplain administration activities to the Flood Control District, effective August 1, 1982, and subsequently entered into an Intergovernmental Agreement with the Flood Control District Board of Directors for administration of floodplain activities on September 27, 1982, and

WHEREAS, the new law assigns to the Flood Control District Board of Directors certain responsibilities previously assigned to the County Board of Supervisors for floodplain regulations and floodplain management, and

WHEREAS, the new law provides for adoption of a fee schedule for review of applications of permits and variances, and

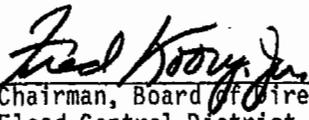
WHEREAS, the new law provides for appointment of a Board of Review which may be the Advisory Board to sit in review and make decisions concerning interpretation of the floodplain regulations and issuance of variances from the terms of the regulations;

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

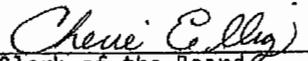
1. That the intergovernmental agreement dated September 27, 1982 transferring floodplain management activities to the Flood Control District be cancelled in accordance with the terms of said agreement;
2. That the Board of Directors of the Flood Control District hereby adopts the existing Amended Floodplain Regulation for the Unincorporated Area of Maricopa County, first adopted on July 14, 1975 and amended on October 17, 1977;

3. That the Chief Engineer and General Manager of the Flood Control District is appointed as the Floodplain Administrator and directed to develop a fee schedule for the review of applications for permits and variances from or interpretations of the Floodplain Regulations, and to present such fee schedule to the Board of Directors for review and adoption;
4. That pursuant to Sections 45-2351 and 45-2352, Chapter 259 and consistent with the Amended Floodplain Regulation for the Unincorporated Area of Maricopa County, the Flood Control Advisory Board of the Flood Control District of Maricopa County is appointed as the Review Board to sit in review and make decisions concerning interpretation of the Floodplain Regulation, allow variances from the terms of the Regulation and hear appeals by any person aggrieved through administration of the Floodplain Regulation. A person aggrieved in any manner by an action of the Review Board may within thirty days appeal to the District Board of Directors. The Board of Directors shall develop rules and procedures by which the Review Board will meet and conduct its floodplain management duties.

DATED this 6th day of August, 1984.


Chairman, Board of Directors
Flood Control District of Maricopa County

ATTEST:


Clerk of the Board

1-BOHR

Board of Hearing Review (BOHR)

MISSION:

The Board of Hearing Review hears appeals to Chief Engineer Orders for floodplain violations and for damage to District facilities violations.

LIAISON:

Eric Hiser, Counsel for the Board

MEMBERS:

District 1: Richard Schaner

District 2: Gregg Monger

District 3: Hemant Patel

District 4: Robert Justice

District 5: Vacant

MEMBER QUALIFICATIONS:

Flood Control District Board of Director's Resolution FCD 2007R006: "NOW, THEREFORE, BE IT RESOLVED, the Board of Directors hereby authorizes the five (5) members of the Floodplain Review Board representing the Board of Directors five (5) districts to serve on and act as the board of hearing review"

MEETINGS:

Meetings will be scheduled as needed to hear appeals to Chief Engineer Orders and for related business. Meetings will generally be scheduled on the same day as an FCAB meeting, to immediately precede or follow the FCAB.

Notices are posted within the first-floor public lobby of the Flood Control District administrative building at 2801 W. Durango Street in Phoenix. Such notices will indicate the date, time and place of the meeting(s), and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting(s).

POWERS AND DUTIES:

A.R.S. § 48-3615.01:

"D. The board of directors shall adopt written rules of procedure for the hearing and review of hearings. These rules shall be adopted in the same manner as floodplain ordinances."

“H. On written request of any party who is subject to the decision and order of the chief engineer or hearing officer pursuant to this section, the board of hearing review may review any decision and order of the chief engineer or hearing officer. The written request for review shall be delivered to the clerk of the board of directors within fifteen days after the date of the final decision and order. The written request shall identify specifically the section or sections of the chief engineer's or hearing officer's final order that is requested to be reviewed by the board of hearing review.

I. The board of hearing review shall set a time and date to hear the matter requested for review. The hearing shall be conducted based on the information presented to the chief engineer or hearing officer in issuing the final decision and order or, in an appeal from a determination of a violation by a hearing officer, the record before the hearing officer. The information presented to the chief engineer or hearing officer in issuing the final decision and order shall be made available to all parties on request. Based on the record before the board of hearing review, the board may deny, approve or modify the order of the chief engineer or the order of the hearing officer. The board shall issue a written order of its decision, including findings of fact and conclusions of law, and shall submit its final written order on the matter to the chief engineer within thirty days after completion of the hearing.”

FORMATION AUTHORITY:

A.R.S. § 48-3603(C)(25):

“Establish a board of hearing review to review decisions of hearing officers that are issued pursuant to section 48-3615.01. The board of hearing review shall consist of one member from each board of directors' district or the board of directors may authorize the citizens' flood control advisory board or the board of review to designate a like number of its members to serve as the board of hearing review.”

2-Procedures

Board of Hearing Review (BOHR)

POWERS AND DUTIES PER STATE STATUTES:

A.R.S. § 48-3615.01:

“D. The board of directors shall adopt written rules of procedure for the hearing and review of hearings. These rules shall be adopted in the same manner as floodplain ordinances.”

“H. On written request of any party who is subject to the decision and order of the chief engineer or hearing officer pursuant to this section, the board of hearing review may review any decision and order of the chief engineer or hearing officer. The written request for review shall be delivered to the clerk of the board of directors within fifteen days after the date of the final decision and order. The written request shall identify specifically the section or sections of the chief engineer's or hearing officer's final order that is requested to be reviewed by the board of hearing review.

I. The board of hearing review shall set a time and date to hear the matter requested for review. The hearing shall be conducted based on the information presented to the chief engineer or hearing officer in issuing the final decision and order or, in an appeal from a determination of a violation by a hearing officer, the record before the hearing officer. The information presented to the chief engineer or hearing officer in issuing the final decision and order shall be made available to all parties on request. Based on the record before the board of hearing review, the board may deny, approve or modify the order of the chief engineer or the order of the hearing officer. The board shall issue a written order of its decision, including findings of fact and conclusions of law, and shall submit its final written order on the matter to the chief engineer within thirty days after completion of the hearing.”

When Recorded Return to:
Contracts Branch
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

RESOLUTION FCD 2016R004

Text Amendment to the Board of Hearing Review Procedures of the Flood Control District of Maricopa County

Agenda Item: C-69-16-035-6-00

WHEREAS, the Flood Control District of Maricopa County (District) was established in accordance with provisions of Arizona Revised Statutes, Title 48, Chapter 21, to identify flood problems, and control waters of rivers, streams and other surface waters to eliminate or minimize flooding of property and the endangering of lives of residents in Maricopa County; and

WHEREAS, protection of the integrity of flood control district facilities and property through the enforcement of the Floodplain Regulations for Maricopa County is essential to the District's ability to prevent flooding damage to property and the endangering of lives; and

WHEREAS, Arizona Revised Statutes (A.R.S.) section 48-3603(C)24 require for a district that intends to take enforcement action pursuant to section 48-3615.01 to adopt written rules of procedure for the hearing and review of decisions by the Board of Hearing Review; and,

WHEREAS, procedures for the Board of Hearing Review were previously adopted by Resolution FCD 2012R002 dated March 14, 2012; and,

WHEREAS, the procedures are revisited to conform with changes in state legislation, and to add additional detail to the procedures that will clarify burden of proof and order of argument before the Board; and,

WHEREAS, the Board of Directors of the Flood Control District of Maricopa County (Board) has held a public hearing as required under A.R.S. section 48-3609.

NOW, THEREFORE, BE IT RESOLVED, the Board in order to carry out its statutory duty to protect the Flood Control District, life, health and property of county residents hereby adopts the Text Amendment to the Board of Hearing Review Procedures for the Flood Control District of Maricopa County as attached hereto and marked as Exhibit A; and

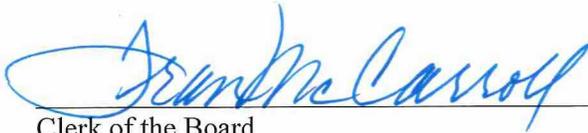
BE IT FURTHER RESOLVED, the Board designates the Chief Engineer and General Manager for the District to administer and enforce the decisions of the Board of Hearing Review for the Flood Control District of Maricopa County.

Dated this 22nd day June, 2016.



Chairman, Board of Directors

ATTEST:



Clerk of the Board

Exhibit A

Board of Hearing Review Procedures

- A. The Board of Hearing Review (“Board”) shall consider only the record of proceedings. No new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer’s file, copies of all evidence submitted to the Hearing Officer at the hearing, a copy of the audiotape of the hearing, a copy of the Chief Engineer’s final decision and order, and any prior orders of the Board or a reviewing court. If the Board determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District’s expense. A trial *de novo* is not permitted.
- B. The person requesting review by the Board of the Chief Engineer’s final decision and order shall deliver a written request for review to the Clerk of the Board of Directors within 15 days after the date of the Chief Engineer’s final decision and order.
- C. Within 30 calendar days of receipt of the written request for review, the Chief Engineer shall prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the request for review to be heard by the Board.
- D. Not fewer than 10 working days prior to the date of the hearing, the clerk of the Board of Hearing Review shall notify all parties of the date, time, and place of the hearing by certified mail to the last known address of the parties.
- E. The Chairperson of the Board, or designee, shall preside at all hearings and shall decide on all questions pertaining to procedure. When appropriate, the Chairperson may issue a prehearing order providing guidance to the parties on the conduct of the hearing.
- F. Each party shall have 10 minutes to present oral arguments. The Chairperson or Board may extend this time.
- G. Each member of the Board and Board counsel may question representatives of any party appearing before them as to the party’s view of the law and record.
- H. The findings of fact of the Hearing Officer and conclusions of law accepted by the Chief Engineer shall carry with them a rebuttable presumption of validity. The party requesting review before the Board shall bear the burden of demonstrating by a preponderance of the evidence that either these findings of fact or conclusions of law are arbitrary, capricious, unreasonable or unsubstantiated by the record established before the Hearing Officer. As to any penalty imposed by the Chief Engineer, the Chief Engineer shall bear the burden of persuasion that the penalty is just and equitable under the circumstances. Once that initial burden is met, the party

requesting review before the Board shall bear the burden of demonstrating that the penalty imposed is unjust and/or inequitable under the circumstances or is inconsistent with the law.

- I. Based on the record before the Board, the Board may deny, approve, modify or return to the Chief Engineer for further consideration, the Chief Engineer's final decision or order. The Board shall issue a written order of its decision including findings of fact and conclusions of law, and shall submit its final written order on the matter to the Chief Engineer within 30 days after completion of the hearing. The Board shall decide by a majority vote of the participating members. The clerk of the Board of Hearing Review shall serve copies of the Board's order on all parties to the hearing.
- J. The final decision of the Board is subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Appendix Typical Order of Argument Before the Board

Except as otherwise provided by order of the Chairperson under Section E or by the Board, the order of argument before the Board will generally be as follows:

Representatives of each party may submit a brief, not to exceed 10 pages in length, to the clerk of the Board of Hearing Review not less than five days before the hearing to assist the Board in understanding their arguments. The clerk will promptly distribute copies to the Board and Board counsel.

The representative of the party requesting review of the Chief Engineer's final decision and order shall speak first and present argument as to why the Chief Engineer's final decision and order is in error and should be denied or modified. The representative of the party requesting review may, with the approval of the Chairperson, reserve time for rebuttal. Board members or Board counsel may ask questions of the representative.

The representative of any other party properly admitted to the hearing shall speak next and present argument as to why the Chief Engineer's final decision and order should be approved, denied, or modified. If there are multiple such parties, they shall speak in an order determined by the Chairperson. Board members or Board counsel may ask questions of the representatives.

The representative of the Flood Control District shall speak after all other parties and present argument as to why the Chief Engineer's final decision and order should be approved. Board members or Board counsel may ask questions of the representative.

The representative of the party requesting review may, if time was reserved for rebuttal, present rebuttal solely to argument presented by another party. Board members or Board counsel may ask questions of the representative.

Following presentation of all argument, the Board Chairperson, or designee, will enquire of Board members and Board counsel whether there are any additional questions. When appropriate, representatives of all parties may be invited to provide responses to questions.

The Chairperson, or designee, will ask the Board members and Board counsel if executive session is needed. If so and otherwise allowed under law, the Board will go into executive session to hear advice of counsel. If needed, the Board may schedule an executive session in accordance with applicable law.

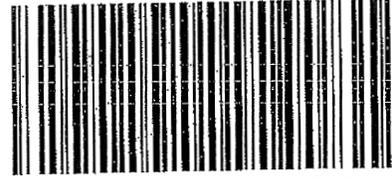
Following executive session, if any, the Board will deliberate in open session. The Board may make a decision, ask Board counsel to research and/or draft a decision, or take the matter under advisement or any combination of the above. Upon deciding what action it is taking, the Board will adjourn until it is ready to complete its deliberations and adopt an order. Notice will be provided of such time to the parties at least 10 days in advance, unless the parties agree on the record to a different schedule.

When recorded mail to:

Name: _____

Address: _____

City/State/Zip: _____



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2012-0226159 03/20/12 09:54 AM
1 OF 1

FLORESC

this area reserved for county recorder

CAPTION HEADING:

RE-RECORDING TO CORRECT THE DATE
RESOLUTION FCD 2012R002

DO NOT REMOVE

This is part of the official document

When Recorded Return to:
Contracts Branch
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

RESOLUTION FCD 2012R002

Procedures for the Board of Hearing Review of the Flood Control District of Maricopa County

Agenda Item: C-69-12-031-6-00

WHEREAS, the Flood Control District of Maricopa County (District) was established in accordance with provisions of Arizona Revised Statutes, Title 48, Chapter 21, to identify flood problems, and control waters of rivers, streams and other surface waters to eliminate or minimize flooding of property and the endangering of lives of residents in Maricopa County; and

WHEREAS, protection of the integrity of flood control district facilities and property through the enforcement of the Floodplain Regulations for Maricopa County is essential to the District's ability to prevent flooding damage to property and the endangering of lives; and

WHEREAS, Arizona Revised Statutes (A.R.S.) section 48-3603(C)24 require for a district that intends to take enforcement action pursuant to section 48-3615.01 to adopt written rules of procedure for the hearing and review of decisions by the Board of Hearing Review; and,

WHEREAS, procedures for the hearing and review by the Board of Hearing Review were previously adopted February 7, 2007 as part of the Enforcement Rules, the procedures are revisited to conform with changes in state legislation; and,

WHEREAS, the Board of Directors of the Flood Control District of Maricopa County (Board) has held a public hearing as required under A.R.S. section 48-3609.

NOW, THEREFORE, BE IT RESOLVED, the Board in order to carry out its statutory duty to protect the Flood Control District, life, health and property of county residents hereby adopts the Procedures for the Board of Hearing Review for the Flood Control District of Maricopa County as attached hereto and marked as Exhibit A; and

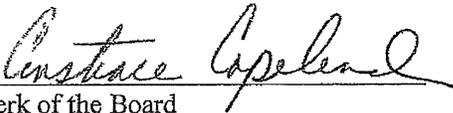
BE IT FURTHER RESOLVED, the Board designates the Chief Engineer and General Manager for the District to administer and enforce the decisions of the Board of Hearing Review for the Flood Control District of Maricopa County.

Dated this 14 day March, 2012.



Chairman, Board of Directors

ATTEST:



DEPUTY Clerk of the Board

Exhibit A

Board of Hearing Review Procedures

- A. The review shall be limited to the record of proceedings before the Hearing Officer and no new evidence shall be introduced. The record of proceedings shall include all pleadings and orders in the Hearing Officer's file, copies of all evidence submitted at the hearing, a copy of the audiotape of the hearing and a copy of the Chief Engineer's final decision and order. If the Board of Hearing Review determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the District's expense. A trial *de novo* is not permitted.
- B. The written request for review of the Chief Engineer's decision and order by the Board of Hearing Review shall be delivered to the Clerk of the Board of Directors within fifteen (15) days after the date of the final decision and order.
- C. Upon receipt of the written request, the Chief Engineer shall, within thirty (30) calendar days, prepare and transmit the complete record to the clerk of the Board of Hearing Review and schedule the request for review to be heard by the Board.
- D. The clerk of the Board of Hearing Review shall notify all parties of the date, time, and place of the request for review hearing by certified mail to the last known address of the parties at least ten (10) working days prior to the date of the hearing.
- E. The Chairperson of the Board of Hearing Review shall preside at all request for review hearings and shall decide on all questions pertaining to procedure.
- F. Each party shall be allowed five minutes to present oral arguments. Time limits may be extended at the discretion of the Chairperson.
- G. All members of the Board may question all parties appearing before them.
- H. The decision to uphold or deny the Chief Engineer's final decision and order shall be decided upon by motion and a majority vote of the members of the Board of Hearing Review.
- I. The final decision of the Board of Hearing Review is subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.



OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2007-0891884 08/07/07 03 50 PM
 2 OF 3

RCUNAR

When Recorded Return to
 Contracts Branch
 Flood Control District of Maricopa County
 2801 West Durango Street
 Phoenix, AZ 85009-6399

RESOLUTION FCD 2007R006

**FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
 DELEGATION OF DUTIES TO THE FLOODPLAIN REVIEW BOARD**

Agenda Item C-69-08-002-6-00

WHEREAS, the Board of Directors of the Flood Control District of Maricopa County (Board of Directors) adopted Enforcement Rules on February 7, 2007, and,

WHEREAS, the Enforcement Rules provide for an administrative hearing process that assists the Flood Control District of Maricopa County (District) in carrying out its statutory duty to protect flood control district property and facilities, and,

WHEREAS, Arizona Revised Statutes Section 48-3603(C)(24) mandates that the Board of Directors establish a board of hearing review to review decisions of a hearing officer, and,

WHEREAS, Arizona Revised Statutes Section 48-3615 01(G) mandates that the board of hearing review, upon written request, review any decision and order of the Chief Engineer and General Manager of the District, and,

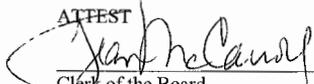
WHEREAS, Arizona Revised Statutes Section 48-3603(C)(24) provides that the board of hearing review shall consist of one member from each Board of Directors districts and that the Board of Directors of may authorize the Floodplain Review Board to serve as the board of hearing review

NOW, THEREFORE, BE IT RESOLVED, the Board of Directors hereby authorizes the five (5) members of the Floodplain Review Board representing the Board of Directors five (5) districts to serve on and act as the board of hearing review

Dated this 25th day of July, 2007



 Chairman, Board of Directors

ATTEST


 Clerk of the Board

Flood Control District of Maricopa County
Board of Hearing Review
2801 W. Durango Street
Phoenix AZ 85009

**STATEMENT OF LOCATIONS WHERE ALL NOTICES OF THE MEETINGS
OF THE FLOOD CONTROL DISTRICT BOARD OF HEARING REVIEW WILL BE
POSTED**

Pursuant to A.R.S. §38-431.02, the Flood Control District of Maricopa County Board of Hearing Review hereby states that all notices of meetings of the Flood Control District of Maricopa County Board of Hearing Review and any of its committees and subcommittees will be posted on the Flood Control District Public Web Site (calendar), as well as on the public notice bulletin board within the Flood Control District office located at 2801 W Durango St, Phoenix, AZ 85009. Flood Control District office is open to the public Monday through Friday from 8:00 a.m. to 5:00 p.m. except legal holidays. Such notices will indicate the date, time, and place of the meeting and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting.

Dated this 13th day of May, 2016.

FCDMC Board of Hearing Review

By Jolene Maiden
Jolene Maiden,
Clerk, Board of Hearing Review